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Legislative Proposals and Explanatory Notes Related to the Taxation of Financial Institutions

Published by
The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance

November 2007

Canada

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Department of Finance
Canada

Ministère des Finances
Canada



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Available from the
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Room P-135, West Tower
300 Laurier Avenue West
Ottawa, Ontario K1A 0G5
Tel: 613-943-8665
Fax: 613-996-0901

Price : \$10.00 including GST

This document is available free on the Internet
at www.fin.gc.ca

Cette publication est également disponible en français

Cat No.: F2-183/2007E
ISBN 978-0-660-19773-9

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Legislative Proposals



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HOUSE OF COMMONS OF CANADA

INCOME TAX ACT

1. (1) The *Income Tax Act* is amended by adding the following after section 12.4:

12.5 (1) The definitions in this section apply for the purposes of this section and section 20.4.

“base year”
« année de base »

“base year” of an insurer means the taxation year of the insurer immediately preceding the transition year of the insurer.

“reserve transition amount”
« montant transitoire »

“reserve transition amount” of an insurer for the transition year of the insurer in respect of an insurance business (other than a life insurance business) carried on by it in Canada in that year, is the positive or negative amount determined by the formula

$$A - B$$

where

A is the maximum amount that the insurer would be permitted to claim under paragraph 20(7)(c) (and that would be prescribed by section 1400 of the Regulations for the purpose of paragraph 20(7)(c)) as a policy reserve for the base year of the insurer in respect of its insurance policies if

- (a) the generally accepted accounting principles that applied to the insurer in valuing its assets and liabilities for the transition year of the insurer had applied to the insurer for the base year of the insurer, and
- (b) section 1400 of the Regulations were read in respect of the base year as it reads in respect of the transition year of the insurer, and

B is the maximum amount that the insurer is permitted to claim under paragraph 20(7)(c) as a policy reserve for the base year of the insurer.

“transition year”
« année transitoire »

“transition year” of an insurer means the first taxation year of the insurer that begins after September 30, 2006.

Transition year income inclusion

(2) There is to be included in computing the income of an insurer for the transition year of the insurer from an insurance business (other than a life insurance business) carried on by it in Canada in that year, the positive amount, if any, of the reserve transition amount of the insurer for the transition year of the insurer in respect of that insurance business.

Transition year income deduction reversal

(3) If an amount has been deducted under subsection 20.4(2) in computing the income of an insurer for the transition year of the insurer from an insurance business carried on by it in Canada in that year, there is to be included in computing the income of the insurer, for each particular taxation year of the insurer that ends after the beginning of the transition year,

from that insurance business, the amount determined in respect of that particular taxation year by the formula

$$A \times B/1825$$

where

- A is the amount deducted under subsection 20.4(2) in computing the income of the insurer for the transition year from that insurance business; and
- B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

Winding-up

(4) If an insurer has, in a winding-up to which subsection 88(1) has applied, been wound-up into another corporation (referred to in this subsection as the “parent”), in applying subsections (3) and 20.4(3) in computing the income of the insurer and of the parent for a particular taxation year that ends on or after the first day on which assets of the insurer were distributed to the parent on the winding-up,

- (a) the parent is, on and after the first day on which assets of the insurer were distributed to the parent on the winding-up, deemed to be the same corporation as and a continuation of the insurer in respect of
 - (i) any amount included under subsection (2) or deducted under subsection 20.4(2) in computing the income of the insurer for the transition year of the insurer,
 - (ii) any amount included under subsection (3) in computing the income of the insurer for a taxation year of the insurer that begins before the first day on which assets of the insurer were distributed to the parent on the winding-up in respect of the amount deducted under subsection 20.4(2) in computing the income of the insurer for the transition year of the insurer,
 - (iii) any amount deducted under subsection 20.4(3) in computing the income of the insurer for a taxation year of the insurer that begins before the first day on which assets of the insurer were distributed to the parent on the winding-up in respect of the amount included under subsection (2) in computing the income of the insurer for the transition year of the insurer,
 - (iv) any amount required to be included, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the insurer were distributed to the parent on the winding-up, under subsection (3) in computing the income of the parent for the particular taxation year of the parent that ends after the first day on which assets of the insurer were distributed to the parent on the winding-up in respect of the amount deducted under subsection 20.4(2) in computing the income of the insurer for the transition year of the insurer, and
 - (v) any amount required to be deducted, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the insurer were distributed to the parent on the winding-up, under subsection 20.4(3) in computing the income of the parent for the particular taxation year of the parent that ends on or after the first day on which assets of the insurer were distributed to the parent on the

winding-up in respect of the amount included under subsection (2) in computing the income of the insurer for the transition year of the insurer; and

(b) the insurer is, in respect of the particular taxation year of the insurer, to determine the value for B in the formula in subsection (3) and 20.4(3) without reference to the days in the particular taxation year of the insurer that are on or after the first day on which assets of the insurer were distributed to the parent on the winding-up.

Amalgamations (5) If there is an amalgamation (within the meaning assigned by subsection 87(1)) of an insurer with one or more other corporations to form one corporation (referred to in this subsection as the “new corporation”), in applying subsections (3) and 20.4(3) in computing the income of the new corporation for a particular taxation year of the new corporation that begins on or after the day on which the amalgamation occurred, the new corporation is, on and after the day on which the amalgamation occurred, deemed to be the same corporation as and a continuation of the insurer in respect of

(a) any amount included under subsection (2) or deducted under subsection 20.4(2) in computing the income of the insurer for the transition year of the insurer;

(b) any amount included under subsection (3) in computing the income of the insurer for a taxation year of the insurer that begins before the day on which the amalgamation occurred in respect of the amount deducted under subsection 20.4(2) in computing the income of the insurer for the transition year of the insurer;

(c) any amount deducted under subsection 20.4(3) in computing the income of the insurer for a taxation year of the insurer that begins before the day on which the amalgamation occurred in respect of the amount included under subsection (2) in computing the income of the insurer for the transition year of the insurer;

(d) any amount required to be included, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection (3) in computing the income of the new corporation for the particular taxation year of the new corporation that ends on or after the day on which the amalgamation occurred in respect of the amount deducted under subsection 20.4(2) in computing the income of the insurer for the transition year of the insurer; and

(e) any amount required to be deducted, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection 20.4(3) in computing the income of the new corporation for the particular taxation year of the new corporation that ends on or after the day on which the amalgamation occurred in respect of the amount included under subsection (2) in computing the income of the insurer for the transition year of the insurer.

Transfer of
insurance
business —
section 138

(6) If subsection 138(11.5) or (11.94) has applied to the transfer, at any time, of an insurance business (other than a life insurance business) carried on in Canada (referred to in this subsection as the “transferred business”) by an insurer (referred to in this subsection as the “transferor”) to another insurer (referred to in this subsection as the “transferee”), in applying subsections (3) and 20.4(3) in computing the income of the transferor and of the

transferee for a particular taxation year that ends on or after the day on which the business was transferred,

(a) the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of

(i) any amount included under subsection (2) or deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(ii) any amount included under subsection (3) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(iii) any amount deducted under subsection 20.4(3) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(iv) any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection (3) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and

(v) any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 20.4(3) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business; and

(b) the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be

(i) included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection (3) in computing the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or

(ii) deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 20.4(3) in

computing the income of the transferor for the particular taxation year without reference to the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

(7) If all or substantially all of the property (referred to in this subsection as the “transferred property”) and liabilities of a business (referred to in this subsection as the “transferred business”) of an insurer have been transferred by the insurer (referred to in this subsection as the “transferor”) to a corporation resident in Canada (referred to in this subsection as the “transferee”) that, immediately after the transfer, was related to the insurer and subsection 85(1) applied to the insurer and the corporation in respect of the transferred property, in applying subsections (3) and 20.4(3) in computing the income of the transferor and of the transferee for a particular taxation year that ends on or after the day on which the business was transferred,

(a) the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of

(i) any amount included under subsection (2) or deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(ii) any amount included under subsection (3) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(iii) any amount deducted under subsection 20.4(3) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(iv) any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection (3) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and

(v) any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 20.4(3) in computing the income of the transferee for the particular taxation year in respect of the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business; and

(b) the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be

(i) included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection (3) in computing the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or

(ii) deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 20.4(3) in computing the income of the transferor for the particular taxation year without reference to the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

(8) Subject to subsections (4) to (7), if at any time, an insurer ceases (otherwise than as a result of a merger to which subsection 87(2) applies, a winding-up to which subsection 88(1) applies or a transfer of the business to which subsection 138(11.5) or (11.94) applies) to carry on all or substantially all of a business (referred to in this subsection as the “discontinued business”), there is to be included in computing the insurer’s income for the insurer’s taxation year that includes the time that is immediately before that time, the amount determined by the formula

$$A - B$$

where

- A is the amount deducted under subsection 20.4(2) in computing the income of the insurer for the transition year of the insurer that can reasonably be attributed to the discontinued business; and
- B is the total of all amounts each of which is an amount included under subsection (3) in computing the income of the insurer for a taxation year in respect of the amount deducted under subsection 20.4(2) in computing the income of the insurer for the transition year of the insurer that can reasonably be attributed to the discontinued business.

Ceasing to exist

(9) If at any time an insurer that carried on an insurance business (other than a life insurance business) ceases to exist (otherwise than as a result of a merger to which subsection 87(2) applies or a winding-up to which subsection 88(1) applies), for the purposes of subsections (8) and 20.4(4), the insurer is deemed to have ceased to carry on the insurance business at the earlier of

- (a) the time (determined without reference to this subsection) at which the insurer ceased to carry on the insurance business; and
- (b) the time that is immediately before the end of the last taxation year of the insurer that ended at or before the time at which the insurer ceased to exist.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

2. (1) The Act is amended by adding the following after section 20.3:

Definitions

Transition year
income
deduction

20.4 (1) The definitions in section 12.5 apply for the purposes of this section.

(2) There is to be deducted in computing the income of an insurer for the transition year of the insurer from an insurance business (other than a life insurance business) carried on by it in Canada in that year, the absolute value of the negative amount, if any, of the reserve transition amount of the insurer for the transition year of the insurer in respect of that insurance business.

Transition year
income .
inclusion
reversal

(3) If an amount has been included under subsection 12.5(2) in computing the income of an insurer for the transition year of the insurer from an insurance business (other than a life insurance business) carried on by it in Canada in that year, there is to be deducted in computing the income of the insurer, for each particular taxation year of the insurer that ends after the beginning of the transition year, from that insurance business, the amount determined in respect of that particular taxation year by the formula

$$A \times B/1825$$

where

A is the amount included under subsection 12.5(2) in computing the income of the insurer for the transition year from that insurance business; and

B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

Ceasing to
carry on
business

(4) Subject to subsections (2) and (3), if at any time, an insurer ceases (otherwise than as a result of a merger to which subsection 87(2) applies, a winding-up to which subsection 88(1) applies or a transfer of the business to which subsection 138(11.5) or (11.94) applies) to carry on all or substantially all of a business (referred to in this subsection as the “discontinued business”), there is to be deducted in computing the income of the insurer for the taxation year of the insurer that includes the time that is immediately before that time, the amount determined by the formula

$$A - B$$

where

A is any amount included under subsection 12.5(2) in computing the income of the insurer for the transition year of the insurer that can reasonably be attributed to the discontinued business; and

B is the total of all amounts each of which is an amount deducted under subsection (3) in computing the income of the insurer for a taxation year in respect of the amount included under subsection 12.5(2) in computing the income of the insurer for the transition year of the insurer that can reasonably be attributed to the discontinued business.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

3. (1) Paragraph 87(2)(g.2) of the Act is replaced by the following:

financial
institution
rules

(g.2) for the purposes of paragraphs 142.4(4)(c) and (d) and subsections 142.5(5) and (7), 142.51(11) and 142.6(1), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Section 87(2.2) of the Act is replaced by the following:

Amalgamation
of insurers

(2.2) Where there has been an amalgamation and one or more of the predecessor corporations was an insurer, the new corporation is, notwithstanding subsection (2), deemed, for the purposes of paragraphs 12(1)(d), (e), (e.1), (i) and (s), subsection 12.5(8), paragraphs 20(1)(l), (l.1), (p) and (jj) and 20(7)(c), subsections 20(22) and 20.4(4), sections 138, 138.1, 140, 142 and 148 and Part XII.3, to be the same corporation as, and a continuation of, each of those predecessor corporations.

(3) Subsections (1) and (2) apply to taxation years that begin on or after October 1, 2006.

4. (1) Subparagraph 88(1)(g)(i) of the Act is replaced by the following:

(i) for the purposes of paragraphs 12(1)(d), (e), (e.1), (i) and (s), subsection 12.5(8), paragraphs 20(1)(l), (l.1), (p) and (jj) and 20(7)(c), subsections 20(22) and 20.4(4), sections 138, 138.1, 140, 142 and 148 and Part XII.3, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary, and

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

5. (1) The definition “life insurance policy” in subsection 138(12) of the Act is replaced by the following:

“life insurance policy”
“police d’assurance-vie”

- (a) a contract for the insurance of risks in respect of the life or death of a person,
- (b) an annuity contract,
- (c) a contract any portion of an insurer’s reserves for which vary in amount depending on the fair market value of specified assets, and
- (d) a contract of reinsurance in respect of any contract referred to in any of paragraphs (a) to (c);

(2) Subsection 138(12) of the Act is amended by adding the following definitions in alphabetical order:

“base year”
“année de base”

“base year” of a life insurer means the taxation year of the life insurer immediately preceding the transition year of the life insurer;

“reserve transition amount”
 “montant transitoire”

“reserve transition amount” of a life insurer for the transition year of the life insurer in respect of a life insurance business carried on by it in Canada in that year, is the positive or negative amount determined by the formula

$$A - B$$

where

- A is the maximum amount that the life insurer would be permitted to claim under subparagraph 138(3)(a)(i) (and that would be prescribed by section 1404 of the Regulations for the purpose of subparagraph 138(3)(a)(i)) as a policy reserve for the base year of the life insurer in respect of its life insurance policies in Canada if
 - (a) the generally accepted accounting principles that applied to the life insurer in valuing its assets and liabilities for the transition year of the life insurer had applied to the life insurer for the base year of the life insurer, and
 - (b) section 1404 of the Regulations were read in respect of the base year as it reads in respect of the transition year of the life insurer, and
- B is the maximum amount that the life insurer is permitted to claim under subparagraph 138(3)(a)(i) as a policy reserve for the base year of the life insurer;

“transition year”
 “année transitoire”

“transition year” of a life insurer means the first taxation year of the life insurer that begins after September 30, 2006;

(3) Section 138 of the Act is amended by adding the following after subsection (15):

Transition year income inclusion

(16) There is to be included in computing the income of a life insurer for the transition year of the life insurer from a life insurance business carried on by it in Canada in that year, the positive amount, if any, of the reserve transition amount of the life insurer for the transition year of the life insurer in respect of that life insurance business.

Transition year income deduction

(17) There is to be deducted in computing the income of a life insurer for the transition year of the life insurer from a life insurance business carried on by it in Canada in that year, the absolute value of the negative amount, if any, of the reserve transition amount of the life insurer for the transition year of the life insurer in respect of that life insurance business.

Transition year income inclusion reversal

(18) If an amount has been included under subsection (16) in computing the income of a life insurer for the transition year of the life insurer from a life insurance business carried on by it in Canada in that year, there is to be deducted in computing the income of the life insurer, for each particular taxation year of the life insurer that ends after the beginning of the transition year, from that life insurance business, the amount determined in respect of that particular taxation year by the formula

$$A \times B/1825$$

where

- A is the amount included under subsection (16) in computing the income of the life insurer for the transition year from that life insurance business; and

Transition year
income
deduction
reversal

- B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

(19) If an amount has been deducted under subsection (17) in computing the income of a life insurer for the transition year of the life insurer from a life insurance business carried on by it in Canada in that year, there is to be included in computing the income of the life insurer, for each particular taxation year of the life insurer that ends after the beginning of the transition year, from that life insurance business, the amount determined in respect of that particular taxation year by the formula

$$A \times B / 1825$$

where

- A is the amount deducted under subsection (17) in computing the income of the life insurer for the transition year from that life insurance business; and
- B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

Winding-up

(20) If a life insurer has, in a winding-up to which subsection 88(1) has applied, been wound-up into another corporation (referred to in this subsection as the “parent”), in applying subsections (18) and (19) in computing the income of the life insurer and of the parent for a particular taxation year that ends on or after the first day on which assets of the life insurer were distributed to the parent on the winding-up,

- (a) the parent is, on and after the first day on which assets of the life insurer were distributed to the parent on the winding-up, deemed to be the same corporation as and a continuation of the life insurer in respect of
 - (i) any amount included under subsection (16) or deducted under subsection (17) in computing the income of the life insurer for the transition year of the life insurer,
 - (ii) any amount deducted under subsection (18) in computing the income of the life insurer for a taxation year of the life insurer that begins before the first day on which assets of the life insurer were distributed to the parent on the winding-up in respect of the amount included under subsection (16) in computing the income of the life insurer for the transition year of the life insurer,
 - (iii) any amount included under subsection (19) in computing the income of the life insurer for a taxation year of the life insurer that begins before the first day on which assets of the life insurer were distributed to the parent on the winding-up in respect of the amount deducted under subsection (17) in computing the income of the life insurer for the transition year of the life insurer,
 - (iv) any amount required to be deducted, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the life insurer were distributed to the parent on the winding-up, under subsection (18) in computing the income of the parent for the particular taxation year of the parent that ends on or after the first day on which assets of the life insurer were distributed to the parent on

the winding-up in respect of the amount included under subsection (16) in computing the income of the life insurer for the transition year of the life insurer, and

(v) any amount required to be included, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the life insurer were distributed to the parent on the winding-up, under subsection (19) in computing the income of the parent for the particular taxation year of the parent that ends after the first day on which assets of the life insurer were distributed to the parent on the winding-up in respect of the amount deducted under subsection (17) in computing the income of the life insurer for the transition year of the life insurer; and

(b) the life insurer is, in respect of the particular taxation year of the life insurer, to determine the value for B in the formula in subsections (18) and (19) without reference to the days in the particular taxation year of the life insurer that are on or after the first day on which assets of the life insurer were distributed to the parent on the winding-up.

Amalgamations (21) If there is an amalgamation (within the meaning assigned by subsection 87(1)) of a life insurer with one or more other corporations to form one corporation (referred to in this subsection as the “new corporation”), in applying subsections (18) and (19) in computing the income of the new corporation for a particular taxation year of the new corporation that begins on or after the day on which the amalgamation occurred, the new corporation is, on and after the day on which the amalgamation occurred, deemed to be the same corporation as and a continuation of the life insurer in respect of

(a) any amount included under subsection (16) or deducted under subsection (17) in computing the income of the life insurer for the transition year of the life insurer;

(b) any amount deducted under subsection (18) in computing the income of the life insurer for a taxation year that begins before the day on which the amalgamation occurred in respect of the amount included under subsection (16) in computing the income of the life insurer for the transition year of the life insurer;

(c) any amount included under subsection (19) in computing the income of the life insurer for a taxation year of the life insurer that begins before the day on which the amalgamation occurred in respect of the amount deducted under subsection (17) in computing the income of the life insurer for the transition year of the life insurer;

(d) any amount required to be deducted, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection (18) in computing the income of the new corporation for the particular taxation year of the new corporation that ends on or after the day on which the amalgamation occurred in respect of the amount included under subsection (16) in computing the income of the life insurer for the transition year of the life insurer; and

(e) any amount required to be included, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection (19) in computing the income of the new corporation for the particular taxation year of the new corporation that ends on or after the day on which the amalgamation occurred in respect of the amount deducted under subsection (17) in computing the income of the life insurer for the transition year of the life insurer;

mation occurred in respect of the amount deducted under subsection (17) in computing the income of the life insurer for the transition year of the life insurer.

(22) If subsection 138(11.5) or (11.94) has applied to the transfer, at any time, of a life insurance business carried on in Canada (referred to in this subsection as the “transferred business”) by a life insurer (referred to in this subsection as the “transferor”) to another life insurer (referred to in this subsection as the “transferee”), in applying subsections (18) and (19) in computing the income of the transferor and of the transferee for a particular taxation year that ends on or after the day on which the business was transferred,

(a) the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of

(i) any amount included under subsection (16) or deducted under subsection (17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(ii) any amount deducted under subsection (18) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection (16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(iii) any amount included under subsection (19) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection (17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(iv) any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection (18) in computing the income of the transferee for the particular taxation year in respect of the amount included under subsection (16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and

(v) any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection (19) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection (17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business; and

(b) the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be

(i) deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection (18) in

computing the income of the transferor for the particular taxation year without reference to the amount included under subsection (16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or

(ii) included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection (19) in computing the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection (17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

Transfer of life
insurance
business —
section 85

(23) If all or substantially all of the property (referred to in this subsection as the “transferred property”) and liabilities of a business (referred to in this subsection as the “transferred business”) of a life insurer have been transferred by the life insurer (referred to in this subsection as the “transferor”) to a corporation resident in Canada (referred to in this subsection as the “transferee”) that, immediately after the transfer, was related to the insurer and subsection 85(1) applied to the insurer and the corporation in respect of the transferred property, in applying subsections (18) and (19) in computing the income of the transferor and of the transferee for a particular taxation year that ends on or after the day on which the business was transferred,

(a) the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of

(i) any amount included under subsection (16) or deducted under subsection (17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(ii) any amount deducted under subsection (18) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection (16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(iii) any amount included under subsection (19) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection (17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

(iv) any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection (18) in computing the income of the transferee for the particular taxation year in respect of the amount included under subsection (16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and

- (v) any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection (19) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection (17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business; and
- (b) the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be
- (i) deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection (18) in computing the income of the transferor for the particular taxation year without reference to the amount included under subsection (16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or
 - (ii) included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection (19) in computing the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection (17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

Ceasing to carry on business

- (24) Subject to subsections (20) to (23), if at any time, a life insurer ceases (otherwise than as a result of a merger to which subsection 87(2) applies, a winding-up to which subsection 88(1) applies or a transfer of the business to which subsection 138(11.5) or (11.94) applies) to carry on all or substantially all of a business (referred to in this subsection as the “discontinued business”),

- (a) there is to be deducted, in computing the income of the life insurer for the taxation year of the life insurer that includes the time that is immediately before that time, the amount determined by the formula

$$A - B$$

where

- A is the amount included under subsection (16) in computing the income of the life insurer for the transition year of the life insurer that can reasonably be attributed to the discontinued business, and
- B is the total of all amounts each of which is an amount deducted under subsection (18) in computing the income of the life insurer for a taxation year in respect of the amount included under subsection (16) in computing the income of the life insurer in the transition year of the life insurer that can reasonably be attributed to the discontinued business; and

(b) there is to be included, in computing the income of the life insurer for the taxation year of the life insurer that includes the time that is immediately before that time, the amount determined by the formula

$$C - D$$

where

- C is the amount deducted under subsection (17) in computing the income of the life insurer for the transition year of the life insurer that can reasonably be attributed to the discontinued business, and
- D is the total of all amounts each of which is an amount included under subsection (19) in computing the income of the life insurer for a taxation year in respect of the amount deducted under subsection (17) in computing the income of the life insurer for the transition year of the life insurer that can reasonably be attributed to the discontinued business.

Ceasing to
exist

(25) If at any time a life insurer that carried on a life insurance business ceases to exist (otherwise than as a result of a merger to which subsection 87(2) applies or a winding-up to which subsection 88(1) applies), for the purposes of subsection (24), the life insurer is deemed to have ceased to carry on the life insurance business at the earlier of

- (a) the time (determined without reference to this subsection) at which the life insurer ceased to carry on the life insurance business; and
- (b) the time that is immediately before the end of the last taxation year of the life insurer that ended at or before the time at which the life insurer ceased to exist.

(4) Subsection (1) applies to taxation years that begin after Announcement Date.

(5) Subsections (2) and (3) apply to taxation years that begin on or after October 1, 2006.

6. (1) Paragraph (a) of the definition “bien évalué à la valeur du marché” in subsection 142.2(1) of the French version of the Act is replaced by the following:

a) une action;

(2) Paragraph (d) of the definition “mark-to-market property” in subsection 142.2(1) of the Act is replaced by the following:

(d) a share of a corporation in which the taxpayer has a significant interest at any time in the year;

(d.1) a property that is, throughout the portion of the year in which the taxpayer holds the property, a prescribed payment card corporation share of the taxpayer, or

(3) Paragraph (d.1) of the definition “mark-to-market property” in subsection 142.2(1) of the Act, as amended by subsection (2), is replaced by the following:

(d.1) a property that is, throughout the portion of the year in which the taxpayer holds the property, a prescribed payment card corporation share of the taxpayer,

(d.2) a property that is, throughout the portion of the year in which the taxpayer holds the property, a prescribed securities exchange investment of the taxpayer, or

(4) Paragraph (d.2) of the definition “mark-to-market property” in subsection 142.2(1) of the Act, as amended by subsection (3), is replaced by the following:

(d.2) a property that is, throughout the portion of the year in which the taxpayer holds the property, a prescribed securities exchange investment of the taxpayer,

(d.3) a share of a corporation held, at any time in the year, by the taxpayer if

(i) control of the corporation is, at any time (referred to in this paragraph “acquisition of control time”) that is after 2001 and is in the 24 month period which begins immediately after the end of the year, acquired by

(A) the taxpayer,

(B) persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(b)), or

(C) the taxpayer and persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(b)), and

(ii) the taxpayer elects in writing that this paragraph apply and files the election with the Minister on or before the taxpayer’s filing-due date for the taxpayer’s taxation year that includes the acquisition of control time, or

(5) The definition “mark-to-market property” in subsection 142.2(1) of the Act, as amended by subsection (4), is replaced by the following:

“mark-to-market” “mark-to-market property” of a taxpayer for a taxation year means property (other than an excluded property) held at any time in the taxation year by the taxpayer that is
“bien évalué à la valeur du marché”

(a) a share,

(b) if the taxpayer is not an investment dealer, a specified debt obligation where

(i) if the obligation is held by the taxpayer at the end of the taxation year, the obligation is, in accordance with generally accepted accounting principles, valued (otherwise than solely because its fair value was less than its cost to the taxpayer, or because of a default of the debtor) at its fair value (determined in accordance with those principles) in the taxpayer's balance sheet as at the end of the taxation year, or

(ii) if the obligation was disposed of in the taxation year, it is reasonable to expect that, if the taxpayer had not disposed of the obligation in the taxation year, the obligation would have been, in accordance with generally accepted accounting principles, valued (otherwise than solely because its fair value was less than its cost to the taxpayer, or because of a default of the debtor) at its fair value (determined in accordance with those principles) in the taxpayer's balance sheet as at the end of the taxation year,

(c) if the taxpayer is an investment dealer, a specified debt obligation, and

(d) a tracking property of the taxpayer where

- (i) if the tracking property is held by the taxpayer at the end of the taxation year, the tracking property is, in accordance with generally accepted accounting principles, valued (otherwise than solely because its fair value was less than its cost to the taxpayer) at its fair value (determined in accordance with those principles) in the taxpayer's balance sheet as at the end of the taxation year, or
- (ii) if the tracking property was disposed of in the taxation year, it is reasonable to expect that, if the taxpayer had not disposed of the tracking property in the taxation year, the tracking property would have been, in accordance with generally accepted accounting principles, valued (otherwise than solely because its fair value was less than its cost to the taxpayer) at its fair value (determined in accordance with those principles) in the taxpayer's balance sheet as at the end of the taxation year;

(6) Subsection 142.2(1) of the Act is amended by adding the following definitions in alphabetical order:

“excluded property”
“bien exclu”

“excluded property” of a taxpayer for a taxation year means property, held at any time in the taxation year by the taxpayer, that is

- (a) a share of the capital stock of a corporation if, at any time in the year, the taxpayer has a significant interest in the corporation;
- (b) a property that is, at all times in the year at which the taxpayer held the property, a prescribed payment card corporation share of the taxpayer;
- (c) a property that is, at all times in the year at which the taxpayer held the property, a prescribed securities exchange investment of the taxpayer;
- (d) a share of the capital stock of a corporation held, at any time in the year, by the taxpayer if
 - (i) control of the corporation is, at any time (referred to in this paragraph as the “acquisition of control time”) that is after 2001 and in the 24 month period which begins immediately after the end of the year, acquired by
 - (A) the taxpayer,
 - (B) persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(b)), or
 - (C) the taxpayer and persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(b)), and
 - (ii) the taxpayer elects in writing that this paragraph apply and files the election with the Minister on or before the taxpayer’s filing-due date for the taxpayer’s taxation year that includes the acquisition of control time, or
- (e) a prescribed property;

"tracking property"
« bien à évaluer »

"tracking property" of a taxpayer means property of the taxpayer the fair market value of which is determined primarily by reference to one or more criteria in respect of property (referred to in this definition as "tracked property") that, if owned by the taxpayer, would be mark-to-market property of the taxpayer, which criteria are

- (a) the fair market value of the tracked property,
- (b) the profits or gains from the disposition of the tracked property,
- (c) the revenue, income or cash flow from the tracked property, or
- (d) any other similar criteria in respect of the tracked property;

(7) The portion of subsection 142.2(2) of the Act before paragraph (a) is replaced by the following:

(2) For the purpose of the definitions "excluded property", "mark-to-market property" and "specified debt obligation" in subsection (1), and subsection (5), a taxpayer has a significant interest in a corporation at any time if

(8) Subsections 142.2(4) and (5) of the Act are replaced by the following:

(4) For the purposes of this subsection and subsections (2) and (3), in determining if, at a particular time, a person or partnership is related to another person or partnership, the rules in section 251 are to be applied as if,

(a) a partnership (other than a partnership having a member the fair market value of whose partnership interest in the partnership cannot be determined) were a corporation having capital stock of a single class divided into 100 issued shares and each member of the partnership owned, at the particular time, that proportion of the issued shares of that class that

(i) the fair market value of the member's partnership interest in the partnership at the particular time

is of

(ii) the fair market value of all partnership interests in the partnership at the particular time; and

(b) a trust (other than a trust having a beneficiary the fair market value of whose beneficial interest in the trust cannot be determined) were a corporation having capital stock of a single class divided into 100 issued shares and each beneficiary under the trust owned, at the particular time, that proportion of the issued shares of that class that

(i) the fair market value of the beneficiary's beneficial interest in the trust at the particular time

is of

(iii) the fair market value at that time of all beneficial interests in the trust.

(9) Subsections (1) and (2) apply to taxation years that begin after February 24, 1994.

Significant
interest

Extension of
meaning of
"related"

(10) Subsection (3) applies to taxation years that begin after 1998.

(11) Subsection (4) applies to taxation years that begin after 2001 except that any election made under paragraph (d.3) of the definition “mark-to-market property” in subsection 142.2(1) of the Act, as enacted by subsection (4), is deemed to have been made on a timely basis if it is filed with the Minister of National Revenue on or before the taxpayer’s filing-due date for the taxpayer’s taxation year in which this Act is assented to.

(12) Subsection (5) applies to taxation years that begin after October 1, 2006 except that for taxation years that begin before Announcement Date, the definition “mark-to-market property” in subsection 142.2(1) of the Act, as enacted by subsection (5), is to be read without its paragraph (d).

(13) Subsections (6) to (8) apply to taxation years that begin on or after October 1, 2006 except that any election made under paragraph (d) of the definition “excluded property” in subsection 142.2(1), as enacted by subsection (6), is deemed to have been made on a timely basis if it is filed with the Minister of National Revenue on or before the taxpayer’s filing-due date for the taxpayer’s taxation year in which this Act is assented to.

7. (1) Section 142.5 of the Act is amended by adding the following after subsection (8):

Application of subsection (8.2) (8.1) Subsection (8.2) applies to a taxpayer for the taxpayer’s first taxation year that begins after October 1, 2006 (referred to in this subsection and subsection (8.2) as the “first taxation year”) if

(a) subsection (2) applied to deem the taxpayer to have disposed of a particular specified debt obligation immediately before the end of the first taxation year (in subsection (8.2) referred to as “the particular disposition”); and

(b) the particular specified debt obligation was owned by the taxpayer at the end of the taxation year immediately preceding the first taxation year and was not a mark-to-market property of the taxpayer for that preceding taxation year.

Rules applicable to first deemed disposition of debt obligation (8.2) If this subsection applies to a taxpayer for the first taxation year, the following rules apply to the taxpayer in respect of the particular disposition:

(a) subsection 20(21) does not apply to the taxpayer in respect of the particular disposition; and

(b) if section 12.4 does not apply to the taxpayer in respect of the particular disposition, there shall be included in computing the taxpayer’s income for the first taxation year the amount, if any, by which

(i) the total of all amounts each of which is

(A) an amount deducted under paragraph 20(1)(p) in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the taxation year immediately preceding the first taxation year, or

(B) an amount of reserve claimed under paragraph 20(1)(l) in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the taxation year immediately preceding the first taxation year,

exceeds

(ii) the total of all amounts each of which is

(A) an amount that has been included under paragraph 12(1)(i) in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the first taxation year of the taxpayer, or

(B) an amount that has been included under paragraph 12(1)(d) in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the first taxation year of the taxpayer.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

8. (1) The Act is amended by adding the following after section 142.5:

142.51 (1) The following definitions apply for the purposes of this section.

Definitions
“base year”
“*année de base*”

“base year” of a taxpayer means the taxation year of the taxpayer immediately preceding the transition year of the taxpayer.

“transition amount”
“*montant transitoire*”

“transition amount” of a taxpayer for the transition year of the taxpayer means the positive or negative amount determined by the formula,

A - B

where

- A is the total of all amounts each of which is the fair market value, at the end of the base year of the taxpayer, of a transition property of the taxpayer; and
- B is the total of all amounts each of which is the cost amount to the taxpayer, at the end of the base year of the taxpayer, of a transition property of the taxpayer.

“transition property”
“*bien transitoire*”

“transition property” of a taxpayer means a property of the taxpayer that

- (a) was owned by the taxpayer at the end of the base year of the taxpayer;
- (b) was, solely because the property was not carried in the taxpayer's balance sheet as at the end of each taxation year of the taxpayer – that ends after the taxpayer last acquired the property (otherwise than by reason of a reacquisition under subsection 142.5(2)) and before the commencement of the taxpayer's transition year – at the property's fair market

value at the end of those taxation years, not a mark-to-market property of the taxpayer for the base year of the taxpayer; and

(c) was a mark-to-market property of the taxpayer for the transition year of the taxpayer.

“transition year” means the first taxation year of the taxpayer that begins after September 30, 2006.

Transition year income inclusion (2) There is to be included in computing the income of a taxpayer for the transition year of the taxpayer, the absolute value of the negative amount, if any, of the transition amount of the taxpayer for the transition year of the taxpayer.

Transition year income deduction (3) There is to be deducted in computing the income of a taxpayer for the transition year of the taxpayer, the positive amount, if any, of the transition amount of the taxpayer for the transition year of the taxpayer.

Transition year income inclusion reversal (4) If an amount has been included under subsection (2) in computing the income of a taxpayer for the transition year of the taxpayer, there is to be deducted in computing the income of the taxpayer for each particular taxation year of the taxpayer that ends after the beginning of the transition year, the amount determined in respect of that particular taxation year by the formula

$$A \times B/1825$$

where

A is the amount included under subsection (2) in computing the income of the taxpayer for the transition year; and

B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

Transition year income deduction reversal (5) If an amount has been deducted under subsection (3) in computing the income of a taxpayer for the transition year of the taxpayer, there is to be included in computing the income of the taxpayer, for each particular taxation year of the taxpayer ending after the beginning of the transition year, the amount determined in respect of that taxation year by the formula

$$A \times B/1825$$

where

A is the amount deducted under subsection (3) in computing the income of the taxpayer for the transition year; and

B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

Winding-up (6) If the taxpayer has, in a winding-up to which subsection 88(1) has applied, been wound-up into another corporation (referred to in this subsection as the “parent”), in applying subsections (4) and (5) in computing the income of the taxpayer and of the parent for a

particular taxation year that ends on or after the first day on which assets of the taxpayer were distributed to the parent on the winding-up,

- (a) the parent is, on and after the first day on which assets of the taxpayer were distributed to the parent on the winding-up, deemed to be the same corporation as and a continuation of the taxpayer in respect of
 - (i) any amount included under subsection (2) or deducted under subsection (3) by the taxpayer in computing the income of the taxpayer for the transition year of the taxpayer,
 - (ii) any amount deducted under subsection (4) in computing the income of the taxpayer for a taxation year of the taxpayer that begins before the first day on which assets of the taxpayer were distributed to the parent on the winding-up in respect of the amount deducted under subsection (2) in computing the income of the taxpayer for the transition year of the taxpayer,
 - (iii) any amount included under subsection (5) in computing the income of the taxpayer for a taxation year of the taxpayer that begins before the first day on which assets of the taxpayer were distributed to the parent on the winding-up in respect of the amount deducted under subsection (3) in computing the income of the taxpayer for the transition year of the taxpayer,
 - (iv) any amount required to be deducted, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the taxpayer were distributed to the parent on the winding-up, under subsection (4) in computing the income of the parent for the particular taxation year of the parent that ends on or after the first day on which assets of the taxpayer were distributed to the parent on the winding-up in respect of the amount included under subsection (2) in computing the income of the taxpayer for the transition year of the taxpayer, and
 - (v) any amount required to be included, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the taxpayer were distributed to the parent on the winding-up, under subsection (5) in computing the income of the parent for the particular taxation year of the parent that ends after the first day on which assets of the taxpayer were distributed to the parent on the winding-up in respect of the amount deducted under subsection (3) in computing the income of the taxpayer for the transition year of the taxpayer; and
- (b) the taxpayer is, in respect of the particular taxation year of the taxpayer, to determine the value for B in the formula in subsection (4) and (5) without reference to the days in the particular taxation year of the taxpayer that are on or after the first day on which assets of the taxpayer were distributed to the parent on the winding-up.

Amalgamations

- (7) If there is an amalgamation (within the meaning assigned by subsection 87(1)) of a taxpayer with one or more other corporations to form one corporation (referred to in this subsection as the “new corporation”), in applying subsections (4) and (5) in computing the income of the new corporation for a particular taxation year of the new corporation that begins on or after the day on which the amalgamation occurred, the new corporation is, on

and after the day on which the amalgamation occurred, deemed to be the same corporation as and a continuation of the taxpayer in respect of

- (a) any amount included under subsection (2) or deducted under subsection (3) in computing the income of the taxpayer for the transition year of the taxpayer;
- (b) any amount deducted under subsection (4) in computing the income of the taxpayer for a taxation year of the taxpayer that begins before the day on which the amalgamation occurred in respect of the amount included under subsection (2) in computing the income of the taxpayer for the transition year of the taxpayer;
- (c) any amount included under subsection (5) in computing the income of the taxpayer for a taxation year of the taxpayer that begins before the day on which the amalgamation occurred in respect of the amount deducted under subsection (3) in computing the income of the taxpayer for the transition year of the taxpayer;
- (d) any amount required to be deducted, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection (4) in computing the income of the new corporation for the particular taxation year of the new corporation in respect of the amount included under subsection (2) in computing the income of the taxpayer for the transition year of the taxpayer; and
- (e) any amount required to be included, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection (5) in computing the income of the new corporation for the particular taxation year of the new corporation that ends on or after the day on which the amalgamation occurred in respect of the amount deducted under subsection (3) in computing the income of the taxpayer for the transition year of the taxpayer.

Transfer of a
business —
section 138

(8) If subsection 138(11.5) or (11.94) has applied to the transfer, at any time, of an insurance business carried on in Canada (referred to in this subsection as the “transferred business”) by an insurer (referred to in this subsection as the “transferor”) to another insurer (referred to in this subsection as the “transferee”), in applying subsections (4) and (5) in computing the income of the transferor and of the transferee for a particular taxation year that ends on or after the day on which the business was transferred,

- (a) the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of
 - (i) any amount included under subsection (2) or deducted under subsection (3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business;
 - (ii) any amount deducted under subsection (4) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

- (iii) any amount included under subsection (5) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection (3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
 - (iv) any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection (4) in computing the income of the transferee for the particular taxation year in respect of the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
 - (v) any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection (5) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection (3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business; and
- (b) the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be
- (i) deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection (4) in computing the income of the transferor for the particular taxation year without reference to the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or
 - (ii) included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection (5) in computing the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection (3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

Transfer of a
business —
section 85

- (9) If all or substantially all of the property (referred to in this subsection as the “transferred property”) and liabilities of a business (referred to in this subsection as the “transferred business”) of a taxpayer have been transferred by the taxpayer (referred to in this subsection as the “transferor”) to a corporation resident in Canada (referred to in this subsection as the “transferee”) that, immediately after the transfer, was related to the taxpayer and subsection 85(1) applied to the taxpayer and the corporation in respect of the transferred property, in applying subsections (4) and (5) in computing the income of the transferor and of the trans-

feree for a particular taxation year, that ends on or after the day on which the business was transferred,

- (a) the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of
 - (i) any amount included under subsection (2) or deducted under subsection (3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
 - (ii) any amount deducted under subsection (4) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
 - (iii) any amount included under subsection (5) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection (3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
 - (iv) any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection (4) in computing the income of the transferee for the particular taxation year in respect of the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
 - (v) any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection (5) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection (3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business; and
- (b) the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be
 - (i) deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection (4) in computing the income of the transferor for the particular taxation year without reference to the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or
 - (ii) included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection (5) in com-

puting the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection (3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

- (10) If subsection 98(6) deems a partnership (in this subsection referred to as the “new partnership”) to be a continuation of another partnership (in this subsection referred to as the “predecessor partnership”), in applying subsections (4) and (5) in computing the income of the new partnership for a particular taxation year of the new partnership that begins on or after the day on which the new partnership comes into existence, the new partnership is, on or after the day on which the new partnership comes into existence, deemed to be the same partnership as and a continuation of the predecessor partnership in respect of
- (a) any amount included under subsection (2) or deducted under subsection (3) in computing the income of the predecessor partnership for the transition year of the predecessor partnership;
 - (b) any amount deducted under subsection (4) in computing the income of the predecessor partnership for a taxation year of the predecessor partnership that begins before the day on which the new partnership comes into existence in respect of the amount included under subsection (2) in computing the income of the predecessor partnership for the transition year of the predecessor partnership;
 - (c) any amount included under subsection (5) in computing the income of the predecessor partnership for a taxation year of the predecessor partnership that begins before the day on which the new partnership comes into existence in respect of the amount deducted under subsection (3) in computing the income of the predecessor partnership for the transition year of the predecessor partnership;
 - (d) any amount required to be deducted, in respect of days in the particular taxation year of the new partnership that are on or after the day on which the new partnership comes into existence, under subsection (4) in computing the income of the new partnership for the particular taxation year of the new partnership in respect of the amount included under subsection (2) in computing the income of the predecessor partnership for the transition year of the predecessor partnership; and
 - (e) any amount required to be included, in respect of days in the particular taxation year of the new partnership that are on or after the day on which the new partnership comes into existence, under subsection (5) in computing the income of the new partnership for the particular taxation year of the new partnership that ends on or after the day on which the new partnership comes into existence in respect of the amount deducted under subsection (3) in computing the income of the predecessor partnership for the transition year of the predecessor partnership.
- (11) Subject to subsections (6) to (10), if at any time, a taxpayer ceases (otherwise than as a result of a merger to which subsection 87(2) applies, a winding-up to which subsection 88(1) applies or a transfer of the business to which subsection 138(11.5) or (11.94) applies)

to carry on all or substantially all of a business (referred to in this subsection as the “discontinued business”),

- (a) there is to be deducted, in computing the income of the taxpayer for the taxation year of the taxpayer that includes the time that is immediately before that time, the amount determined by the formula

$$A - B$$

where

- A is the amount included under subsection (2) in computing the income of the taxpayer for the transition year of the taxpayer that can reasonably be attributed to the discontinued business, and
- B is the total of all amounts each of which is an amount deducted under subsection (4) in computing the income of the taxpayer for a taxation year in respect of the amount included under subsection (2) in computing the income of the taxpayer in the transition year of the taxpayer that can reasonably be attributed to the discontinued business; and
- (b) there is to be included, in computing the income of the taxpayer for the taxation year of the taxpayer that includes the time that is immediately before that time, the amount determined by the formula

$$C - D$$

where

- C is the amount deducted under subsection (3) in computing the income of the taxpayer for the transition year of the taxpayer that can reasonably be attributed to the discontinued business, and
- D is the total of all amounts each of which is an amount included under subsection (5) in computing the income of the taxpayer for a taxation year in respect of the amount deducted under subsection (3) in computing the income of the taxpayer for the transition year of the taxpayer that can reasonably be attributed to the discontinued business.

Ceasing to exist
 (12) If at any time a taxpayer that carried on a business ceases to exist (otherwise than as a result of a merger to which subsection 87(2) applies or a winding-up to which subsection 88(1) applies), for the purposes of subsection (10), the taxpayer is deemed to have ceased to carry on the business at the earlier of

- (a) the time (determined without reference to this subsection) at which the taxpayer ceased to carry on the business; and
- (b) the time that is immediately before the end of the last taxation year of the taxpayer that ended at or before the time at which the taxpayer ceased to exist.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

9. (1) Section 142.6 of the Act is amended by adding the following after subsection (1.3):

(1.4) If, at the end of a particular taxation year, a taxpayer holds shares of the capital stock of a corporation, because of that holding, the taxpayer has a significant interest in that corporation at any time in that taxation year, and the taxpayer did not, at any time in the following taxation year have a significant interest in that corporation, the taxpayer is deemed to have,

(a) disposed of those shares immediately before the end of the particular taxation year for proceeds equal to the fair market value, at that time, of those shares; and

(b) acquired those shares at the end of the particular taxation year at a cost equal to those proceeds.

(1.5) If, at any particular time in a taxation year, a property becomes a mark-to-market property of a taxpayer for the taxation year because it ceased, at the particular time, to be a prescribed securities exchange investment of the taxpayer, the taxpayer is deemed

(a) to have disposed of the property immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time; and

(b) to have reacquired the property, at the particular time, at a cost equal to those proceeds.

(1.6) If, at any particular time in a taxation year, a property becomes a mark-to-market property of a taxpayer for the taxation year because it ceased, at the particular time, to be a prescribed payment card corporation share of the taxpayer, the taxpayer is deemed

(a) to have disposed of the property immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time; and

(b) to have reacquired the property, at the particular time, at a cost equal to those proceeds.

(2) Subsection 142.6(1.4) of the Act, as enacted by subsection (1), applies to taxation years that begin on or after October 1, 2006.

(3) Subsection 142.6(1.5) of the Act, as enacted by subsection (1), applies to taxation years that begin after 1998.

(4) Subsection 142.6(1.6) of the Act, as enacted by subsection (1), applies to taxation years that begin after February 24, 1994.

10. (1) Section 152 of the Act is amended by adding the following after subsection (6.1):

(6.2) The Minister shall reassess a taxpayer's tax for a particular taxation year of the taxpayer, in order to take into account the application in computing the income of the taxpayer for the particular taxation year of paragraph (d) of the definition "excluded property" in subsection 142.2(1) to shares held by the taxpayer in the particular year, if

Change in
status —
significant
interest

Change in
status —
prescribed
securities
exchange
investment

Change in
status —
prescribed
payment card
corporation
share

Extended
reassessment
period

- (a) the taxpayer has filed for the particular taxation year the return of income as required by section 150;
- (b) paragraph (d) of that definition applies to those shares for the particular taxation year; and
- (c) the taxpayer files with the Minister, on or before the filing-due date for the taxpayer's taxation year that includes the acquisition of control time referred to in paragraph (d) of that definition, a prescribed form amending the return.

(2) Subsection (1) applies to taxation years that begin after 2001, except that

- (a) for taxation years that begin before October 1, 2006, each reference in subsection 152(6.2) of the Act, as enacted by subsection (1), to "paragraph (d) of the definition "excluded property"" shall be read as a reference to "paragraph (d.3) of the definition "mark-to-market property""; and
- (b) a prescribed form referred to in paragraph 152(6.2)(c) of the Act, as enacted by subsection (1), is deemed to have been filed by a taxpayer with the Minister of National Revenue on a timely basis if it is filed by the taxpayer with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to.

11. (1) Clause 181.3(1)(c)(ii)(B) of the Act is repealed.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

12. (1) Subparagraph 190.11(b)(ii) of the Act is repealed.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

13. (1) Subparagraph 190.13(c)(iv) of the Act is repealed.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

INCOME TAX REGULATIONS

14. (1) The portion of subsection 1401(1) of the Regulations before subparagraph (c)(i) is replaced by the following:

1401. (1) For the purposes of subsection 211.1(3) of the Act and section 307 of the Regulations, the amounts determined under this subsection are,

(a) in respect of deposit administration fund policies, the amount claimed by the insurer that is a reasonable amount in respect of the aggregate of the insurer's liabilities under the policies as at the end of the year and does not exceed the aggregate of the insurer's liabilities under those policies calculated in the manner required for the purposes of the insurer's annual report to the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

(b) in respect of a group term life insurance policy that provides coverage for a period not exceeding 12 months, the amount claimed by the insurer not exceeding the unearned

portion of the premium paid by the policyholder for the policy at the end of the year determined by apportioning the premium paid by the policyholder equally over the period to which that premium pertains;

(c) in respect of a life insurance policy, other than a policy referred to in paragraph (a) or (b), the amount claimed by the insurer not exceeding the greater of

(2) The portion of paragraph 1401(1)(c.*I*) of the Regulations before subparagraph (i) is replaced by the following:

(c.*I*) in respect of a group life insurance policy, the amount claimed by the insurer as an amount (other than an amount in respect of which a deduction may be claimed by the insurer pursuant to subsection 140(1) of the Act because of subparagraph 138(3)(a)(v) of the Act in computing its income for the year) in respect of a dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy that will be used by the insurer to reduce or eliminate a future adverse claims experience under the policy or that will be paid or unconditionally credited to the policyholder by the insurer or applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the insurer, not exceeding the least of

(3) The portion of paragraph 1401(1)(d) of the Regulations before its subparagraph (i) is replaced by the following:

(d) in respect of a policy, other than a policy referred to in paragraph (a), the amount claimed by the insurer, in respect of a benefit, risk or guarantee that is

(4) Paragraphs 1401(1)(d.*I*) to (e) of the Regulations are repealed.

(5) Subsections 1401(1.1) to (4) of the Regulations are repealed.

(6) Subsections (1) to (5) apply to taxation years that begin on or after October 1, 2006.

15. (1) The headings before section 1404 and section 1404 of the Regulations are replaced by the following:

DIVISION 4

LIFE INSURANCE POLICY RESERVES

1404. (1) For the purpose of subparagraph 138(3)(a)(i) of the Act, there may be deducted, in computing a life insurer's income from carrying on its life insurance business in Canada for a taxation year in respect of its life insurance policies in Canada, the amount the insurer claims, not exceeding

(a) the amount determined under subsection (3) in respect of the insurer for the year, where that amount is greater than nil; and

(b) nil, in any other case.

(2) For the purpose of paragraph 138(4)(b) of the Act, the amount prescribed in respect of an insurer for a taxation year, in respect of its life insurance policies in Canada, is

(a) the absolute value of the amount determined under subsection (3) in respect of the insurer for the year, where that amount is less than nil; and

(b) nil, in any other case.

(3) For the purposes of paragraphs (1)(a) and (2)(a), the amount determined under this subsection in respect of an insurer for a taxation year, in respect of its life insurance policies in Canada, is the amount, which may be positive or negative, determined by the formula

$$A + B + C + D - M$$

where

A is the amount (except to the extent the amount is determined in respect of a claim, premium, dividend or refund in respect of which an amount is included in determining the value of B, C or D), in respect of the insurer's life insurance policies in Canada, equal to the lesser of

(a) the total of the reported reserves of the insurer at the end of the year in respect of those policies, and

(b) the total of the policy liabilities of the insurer at the end of the year in respect of those policies;

B is the amount, in respect of the insurer's life insurance policies in Canada under which there may be claims incurred before the end of the year that have not been reported to the insurer before the end of the year, equal to 95% of the lesser of

(a) the total of the reported reserves of the insurer at the end of the year in respect of the possibility that there are such claims, and

(b) the total of the policy liabilities of the insurer at the end of the year in respect of the possibility that there are such claims;

C is the total of all amounts each of which is the unearned portion at the end of the year of the premium paid by the policyholder for the policy, determined by apportioning the premium paid by the policyholder equally over the period to which that premium relates, where the policy is a group term life insurance policy that

(a) provides coverage for a period that does not exceed 12 months, and

(b) is a life insurance policy in Canada;

D is the total of all amounts (other than an amount deductible under subparagraph 138(3)(a)(v) of the Act) each of which is the amount, which is the least of P, Q and R, in respect of a dividend, refund of premiums or refund of premium deposits provided for under the terms of a group life insurance policy that is a life insurance policy in Canada that will be

(a) used by the insurer to reduce or eliminate a future adverse claims experience under the policy,

(b) paid or unconditionally credited to the policyholder by the insurer, or

(c) applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the insurer under the policy,

where

P is a reasonable amount as a reserve determined as at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy,

Q is 25% of the amount of the premium under the terms of the policy for the 12-month period ending

(a) on the day the policy is terminated, if the policy is terminated in the year, and

(b) at the end of the year, in any other case, and

R is the amount of the reported reserve of the insurer at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy; and

M is the total of all amounts determined in respect of a life insurance policy in Canada each of which is

(a) an amount payable in respect of a policy loan under the policy, or

(b) interest that has accrued to the insurer to the end of the year in respect of a policy loan under the policy.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

16. (1) The definition “life insurance policy in Canada” in section 1408 of the Regulations is replaced by the following:

“life insurance policy in Canada” “life insurance policy in Canada” has the same meaning as defined in subsection 138(12).

“life insurance policy in Canada”
“police d'assurance-vie au Canada”
« police d'assurance-vie au Canada »

(2) Section 1408 of the Regulations is amended by adding the following in alphabetical order:

“life insurance policy” “life insurance policy” has the same meaning as defined in subsection 138(12).

“life insurance policy”
“police d'assurance-vie”
« police d'assurance-vie »

(3) Subsections (1) and (2) apply to taxation years that begin after Announcement Date.

17. (1) Subsection 2400(1) of the Regulations is amended by adding the following in alphabetical order:

“base year” “base year” of an insurer means the taxation year of the insurer immediately preceding the transition year of the insurer.

“base year”
“année de base”
« année de base »

“transition year”
 « année transitoire »

“transition year” of an insurer means the first taxation year of the insurer that begins after September 30, 2006.

(2) Section 2400 of the Regulations is amended by adding the following after subsection (7):

Transition year

(8) In applying the provisions of this Part to an insurer for the transition year of the insurer, any computation required to be made under the provisions of this Part in respect of the insurer in respect of the base year of the insurer shall be performed using the same definitions, rules and methodology that were employed in making the computations required to be made under the provisions of this Part in respect of the insurer in respect of the transition year of the insurer.

(3) Subsections (1) and (2) apply to taxation years that begin on or after October 1, 2006.

18. (1) The Regulations are amended by adding the following after section 9002:

9002.1 (1) The following definitions apply in this section.

“qualifying first-tier subsidiary”
 « filiale admissible de premier rang »

“qualifying first-tier subsidiary” of a particular corporation at any time means another corporation (referred to in this definition as the “first-tier subsidiary”) if, throughout each period that is within the taxation year of the particular corporation that includes that time and that is a period throughout which the particular corporation held shares of the first-tier subsidiary,

(a) the activities carried on by the first-tier subsidiary consist principally of qualifying stock exchange operation activities or the holding of shares of the capital stock of or debt issued by qualifying second-tier subsidiaries of the particular corporation;

(b) the particular corporation holds

(i) shares of the first-tier subsidiary that confer a total of 90% or more of the votes that could be cast under all circumstances at an annual meeting of the shareholders of the first-tier subsidiary, and

(ii) shares of the first-tier subsidiary having a total fair market value of 90% or more of the fair market value of all the issued shares of the first-tier subsidiary;

(c) all or substantially all of the fair market value of the property of the first-tier subsidiary is attributable to

(i) property used by the first-tier subsidiary principally in the course of carrying on qualifying stock exchange operation activities,

(ii) property owned by the first-tier subsidiary that is a debt issued by, or a share of the capital stock of, a qualifying second-tier subsidiary of the particular corporation if one or more qualifying first-tier subsidiaries in respect of the particular corporation, or the particular corporation and one or more qualifying first-tier subsidiaries of the particular corporation, hold

(A) shares of the second-tier subsidiary that confer a total of 90% or more of the votes that could be cast under all circumstances at an annual meeting of the shareholders of the second-tier subsidiary, and

(B) shares of the second-tier subsidiary that have a total fair market value of 90% or more of the fair market value of all the issued shares of the second-tier subsidiary, or

(iii) any one or more of the properties described in subparagraph (i) or (ii); and

(d) all or substantially all of the income of the first-tier subsidiary is

(i) income derived from qualifying stock exchange operation activities carried on by the first-tier subsidiary,

(ii) interest, dividends, or fees for services, paid to the first-tier subsidiary by a qualifying second-tier subsidiary of the particular corporation, or

(iii) any combination of the incomes referred to in subparagraph (i) or (ii).

“qualifying second-tier subsidiary”
« filiale admissible de second rang »

“qualifying second-tier subsidiary” of a particular corporation at any time means another corporation (referred to in this definition as the “second-tier subsidiary”) if throughout each period that is within the taxation year of the particular corporation that includes that time and that is a period throughout which any of the particular corporation or a qualifying first-tier subsidiary of the particular corporation held shares of the second-tier subsidiary

(a) the activities carried on by the second-tier subsidiary consist principally of qualifying stock exchange operation activities;

(b) all or substantially all of the fair market value of the property of the second-tier subsidiary is attributable to property used by the second-tier subsidiary principally in carrying on qualifying stock exchange operation activities; and

(c) all or substantially all of the income of the second-tier subsidiary is derived from qualifying stock exchange operation activities carried on by the second-tier subsidiary.

“qualifying securities exchange investment”
« placement en bourse admissible »

“qualifying securities exchange investment” of a taxpayer at any time in a taxation year of the taxpayer means a share of the capital stock of a particular corporation held by the taxpayer at that time if, throughout the portion of the taxation year that begins at the beginning of the taxation year and ends at that time

(a) the particular corporation is not a public corporation;

(b) the taxpayer is an investment dealer (within the meaning assigned by subsection 142.2(1) of the Act);

(c) the activities carried on by the particular corporation consist principally of qualifying stock exchange operation activities;

(d) all or substantially all of the fair market value of the property of the particular corporation is attributable to

- (i) property used by the particular corporation principally in qualifying stock exchange operation activities;
 - (ii) property that is owned by the particular corporation and is a debt issued by, or is a share in the capital stock of, a corporation that is
 - (A) a qualifying first-tier subsidiary of the particular corporation,
 - (B) a qualifying second-tier subsidiary of the particular corporation, or
 - (C) in the case of a debt issued, one or more subsidiaries described in clauses (A) and (B),
 - (iii) property that is a share, or another equity interest, in a specified support entity or in a corporation exempt from tax under subsection 149(1), or
 - (iv) any one or more of the properties described in subparagraphs (i), (ii) and (iii); and
- (e) all or substantially all of the income of the particular corporation is
- (i) income derived from the qualifying stock exchange operation activities carried on by the particular corporation,
 - (ii) interest, dividends or fees for services, paid or payable to the particular corporation by
 - (A) a qualifying first-tier subsidiary of the particular corporation, or
 - (B) a qualifying second-tier subsidiary of the particular corporation, or
 - (iii) any combination of incomes referred to in subparagraph (i) or (ii).

“qualifying stock exchange operation activities”
 « activités admissibles liées à l’exploitation d’une bourse »

“qualifying stock exchange operation activities” means

- (a) the operation of a stock exchange in Canada;
- (b) the operation of a quotation and trade reporting system in Canada;
- (c) the provision of services that are connected with the activities referred to in paragraphs (a) or (b);
- (d) the deriving of income from property used or held in the course of carrying on the activities referred to in any of paragraphs (a) to (c);
- (e) any combination of activities described in any of paragraphs (a) to (d).

“quotation and trade reporting system in Canada” means a quotation and trade reporting system that

“système de cotation et de déclaration d’opérations au Canada”

- (a) is located in Canada; and
- (b) is regulated by, and complies with the requirements of, a securities commission (or a similar authority) of a province.

“specified support entity”

“specified support entity” of a particular corporation means another corporation

- (a) the principal business of which is the operation of a request-for-quote system for the trading of securities; and
- (b) in which the particular corporation has a significant interest (within the meaning of subsection 142.2(2) of the Act).

“stock exchange in Canada”

“stock exchange in Canada” means an exchange that is established for the purpose of trading stocks, commodities, futures, financial derivatives, options, debt or any other traded property and that is

- (a) located in Canada; and
- (b) regulated by, and complies with the requirements of, a securities commission (or a similar authority) of a province.

(2) A share of the capital stock of a particular corporation held by a taxpayer is, for the purpose of paragraph (c) of the definition “excluded property” in subsection 142.2(1) of the Act, a prescribed securities exchange investment of the taxpayer for those periods in the taxation year of the taxpayer during which that share is a qualifying securities exchange investment of the taxpayer.

9002.2 (1) The following definitions apply in this section.

“payment card corporation”

“payment card corporation” at any time means a corporation in respect of which, throughout its taxation year that includes that time,

- (a) all or substantially all of the activities carried on by the corporation were qualifying payment card business activities; and

(b) all or substantially all of the fair market value of the property owned by the corporation was attributable to property that was used or held in the course of carrying on the qualifying payment card business activities of the corporation.

“qualifying payment card corporation share” of a taxpayer at any time means a share of the capital stock of a payment card corporation held by the taxpayer at that time if

- “(a) the share is not, at that time, listed on a stock exchange;
- “(b) the share is not convertible into, is not exchangeable for, and does not derive its value from, a share of the capital stock of the payment card corporation, or of a corporation related to it, that is listed on a stock exchange;
- “(c) the only persons permitted, at that time, to own the share and shares identical to the share are persons that are licensed by the payment card corporation (or a corporation related to the payment card corporation) to issue payment cards of the payment card brands of the payment card corporation; and
- “(d) the share was issued by the payment card corporation to the taxpayer or to a person related to the taxpayer.

“qualifying payment card business activities” of a corporation means activities related to managing payment card brands including

- “(a) licensing payment card brands to financial institutions;
- “(b) processing payments made by holders of payment cards managed by the corporation;
- “(c) providing consulting, information and other services to licensees of the corporation;
- “(d) deriving income from property used or held in the course of carrying out the activities described in paragraphs (a) to (c);
- “(e) holding shares of the capital stock or indebtedness of one or more payment card corporations that are at that time connected with the corporation (within the meaning of subsection 186(4) of the Act on the assumption that the payment card corporation is at that time a “payer corporation” within the meaning of that subsection); and
- “(f) any combination of the activities described in any of paragraphs (a) to (e).

(2) A share of the capital stock of a particular corporation held by a taxpayer is, for the purpose of paragraph (b) of the definition “excluded property” in subsection 142.2(1) of the

“qualifying payment card corporation share”
 « action admissible de société émettrice de cartes de paiement »

“qualifying payment card business activities”
 « activités admissibles de gestion de cartes de paiement »

Act, a prescribed payment card corporation share of the taxpayer for those periods in the taxation year of the taxpayer during which that share is a qualifying payment card corporation share of the taxpayer.

(2) Section 9002.1 of the Regulations, as enacted by subsection (1) applies to taxation years that begin after 1998, except that, for taxation years that begin after 1998 and before October 1, 2006, subsection 9002.1(2), is to be read as follows:

(2) A share of the capital stock of a particular corporation held by a taxpayer is, for the purpose of paragraph (d.2) of the definition “mark-to-market property” in subsection 142.2(1) of the Act, a prescribed securities exchange investment of the taxpayer for those periods in the taxation year of the taxpayer during which that share is a qualifying securities exchange investment of the taxpayer.

(3) Section 9002.2 of the Regulations, as enacted by subsection (1) applies to taxation years that begin after February 24, 1994, except that, for taxation years that begin after that date and before October 1, 2006, subsection 9002.2(2), as enacted by subsection (2), is to be read as follows:

(2) A share of the capital stock of a particular corporation held by a taxpayer is, for the purpose of paragraph (d.1) of the definition “mark-to-market property” in subsection 142.2(1) of the Act, a prescribed payment card corporation share of the taxpayer for those periods in the taxation year of the taxpayer during which that share is a qualifying payment card corporation share of the taxpayer.

Explanatory Notes

Preface

These explanatory notes describe proposed amendments to the *Income Tax Act* and the *Income Tax Regulations*. These explanatory notes describe these amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

References to "Announcement Date" in the proposed legislation and explanatory notes should be read as referring to the date this material was released.

The Honourable James. M. Flaherty, P.C., M.P.
Minister of Finance

These explanatory notes are provided to assist in an understanding of the proposed amendments to which they relate. These notes are intended for information purposes and should not be construed as an official interpretation of the provisions they describe.

Income Tax Act

Clause 1

Insurer's Reserve Inclusion

ITA

12.5

New Section 12.5 of the *Income Tax Act* (the “Act”) provides transitional rules for insurers in respect of their insurance businesses (other than life insurance businesses) as a result of changes to accounting rules that may result in changes to the manner in which these insurers calculate their reserves under paragraph 20(1)(m) and their income under sections 142.2 to 142.6. Similar changes applicable to insurers in respect of their life insurance businesses are proposed in section 138.

For further details, see the commentary to proposed section 142.51 of the Act and proposed amendments to Part XIV of the *Income Tax Regulations* (the “Regulations”).

Definitions

ITA

12.5(1)

New subsection 12.5(1) of the Act contains definitions that apply for the purposes of new section 12.5.

“base year”

The “base year” of an insurer is defined as the taxation year of the insurer immediately preceding the transition year of the insurer.

“reserve transition amount”

The “reserve transition amount” of an insurer for the transition year of the insurer in respect of an insurance business (other than a life insurance business) carried on by it in Canada in that year is defined as the positive or negative amount determined by the formula A-B.

In applying the formula, element A is the maximum amount that the insurer would be permitted to claim under paragraph 20(7)(c) of the Act (and that would be prescribed by section 1400 of the Regulations for the purpose of that paragraph) as a policy reserve for the base year of the insurer in respect of its insurance policies, if

- the generally accepted accounting principles that applied to the insurer in valuing its assets and liabilities for the transition year of the insurer had applied to the insurer for the base year of the insurer, and
- section 1400 of the Regulations were read in respect of the base year as it reads in respect of the transition year of the insurer.

Element B of the formula is the maximum amount that the insurer is permitted to claim under paragraph 20(7)(c) as a policy reserve for the base year of the insurer.

For further information, see commentary in regards to the new definitions of “base year” and “transition year” in subsection 12.5(1).

“transition year”

The “transition year” of an insurer is defined as the first taxation year of the insurer that begins after September 30, 2006.

The definitions in subsection 12.5(1) of the Act apply to taxation years that begin on or after October 1, 2006.

Transition year income inclusion

ITA

12.5(2)

New subsection 12.5(2) of the Act provides that there is to be included in computing an insurer's income for the transition year of the insurer from an insurance business (other than a life insurance business) carried on by it in Canada in that year, the positive amount, if any, of the reserve transition amount of the insurer for the transition year of the insurer in respect of that insurance business.

For further details, see the commentary to the definitions "reserve transition amount" and "transition year" in proposed subsection 12.5(1).

New subsection 12.5(2) applies to taxation years that begin on or after October 1, 2006.

Transition year income deduction reversal

ITA

12.5(3)

New subsection 12.5(3) of the Act provides that, where an amount has been deducted under subsection 20.4(2) of the Act in computing an insurer's income for the transition year of the insurer from an insurance business carried on by it in Canada in that year, there is to be included in computing the insurer's income, for each particular taxation year of the insurer that ends after the beginning of the transition year, from that insurance business, the amount determined in respect of that particular taxation year by the formula

$$A \times B/1825$$

where

A is the amount deducted under subsection 20.4(2) in computing the insurer's income for the transition year from that insurance business, and

B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

For further details, see the commentary to the definitions "reserve transition amount" and "transition year" in proposed subsection 12.5(1) of the Act.

New subsection 12.5(3) applies to taxation years that begin on or after October 1, 2006.

Winding-up

ITA

12.5(4)

New subsection 12.5(4) of the Act provides that, where an insurer has (in a winding-up to which subsection 88(1) of the Act has applied) been wound-up into another corporation (the "parent"), in applying subsections 12.5(3) and 20.4(3) of the Act in computing the insurer's income and that of the parent for a particular taxation year that ends on or after the first day on which assets of the insurer were distributed to the parent on the winding-up,

- the parent is, on and after the first day on which assets of the insurer were distributed to the parent on the winding-up, deemed to be the same corporation as and a continuation of the insurer in respect of
 - any amount included under subsection 12.5(2) of the Act, or deducted under subsection 20.4(2) of the Act, in computing the insurer's income for the transition year of the insurer,

- any amount included under subsection 12.5(3) in computing the insurer's income for a taxation year of the insurer that begins before the first day on which assets of the insurer were distributed to the parent on the winding-up in respect of the amount deducted under subsection 20.4(2) in computing the insurer's income for the transition year of the insurer,
- any amount deducted under subsection 20.4(3) in computing the insurer's income for a taxation year that begins before the first day on which assets of the insurer were distributed to the parent on the winding-up in respect of the amount included under subsection 12.5(2) in computing the insurer's income for the transition year of the insurer,
- any amount required to be included, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the insurer were distributed to the parent on the winding-up, under subsection 12.5(3) in computing the income of the parent for the particular taxation year of the parent that ends after the first day on which assets of the insurer were distributed to the parent on the winding-up in respect of the amount deducted under subsection 20.4(2) in computing the insurer's income for the transition year of the insurer, and
- any amount required to be deducted, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the insurer were distributed to the parent on the winding-up, under subsection 20.4(3) in computing the income of the parent for the particular taxation year of the parent that ends on or after the first day on which assets of the insurer were distributed to the parent on the winding-up in respect of the amount included under subsection 12.5(2) in computing the insurer's income for the transition year of the insurer, and
- the insurer is, in respect of the particular taxation year of the insurer, to determine the value for B in the formula in subsection 12.5(3) and 20.4(3) without reference to the days in the particular taxation year of the insurer that are on or after the first day on which assets of the insurer were distributed to the parent on the winding-up.

New subsection 12.5(4) applies to taxation years that begin on or after October 1, 2006.

Amalgamations

ITA

12.5(5)

New subsection 12.5(5) of the Act provides that, where there has been an amalgamation (within the meaning assigned by subsection 87(1) of the Act) of an insurer with one or more other corporations to form one corporation (the “new corporation”), in applying subsections 12.5(3) and 20.4(3) of the Act in computing the income of the new corporation for a particular taxation year of the new corporation that begins on or after the day on which the amalgamation occurred, the new corporation is, on and after the day on which the amalgamation occurred, deemed to be the same corporation as and a continuation of the insurer in respect of

- any amount included under subsection 12.5(2) of the Act or deducted under subsection 20.4(2) of the Act in computing the insurer's income for the transition year of the insurer,
- any amount included under subsection 12.5(3) in computing the insurer's income for a taxation year of the insurer that begins before the day on which the amalgamation occurred in respect of the amount deducted under subsection 20.4(2) in computing the insurer's income for the transition year of the insurer,
- any amount deducted under subsection 20.4(3) in computing the insurer's income for a taxation year that begins before the day on which the amalgamation occurred in respect of the amount included under subsection 12.5(2) in computing the insurer's income for the transition year of the insurer,

- any amount required to be included, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection 12.5(3) in computing the income of the new corporation for the particular taxation year of the new corporation that ends on or after the day on which the amalgamation occurred in respect of the amount deducted under subsection 20.4(2) in computing the insurer's income for the transition year of the insurer, and
- any amount required to be deducted, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection 20.4(3) in computing the income of the new corporation for the particular taxation year of the new corporation that ends on or after the day on which the amalgamation occurred in respect of the amount included under subsection 12.5(2) in computing the insurer's income for the transition year of the insurer.

New subsection 12.5(5) applies to taxation years that begin on or after October 1, 2006.

Transfer of insurance business — section 138

ITA

12.5(6)

New subsection 12.5(6) of the Act provides that, where subsection 138(11.5) or (11.94) of the Act has applied to the transfer, at any time, of an insurance business (other than a life insurance business) carried on in Canada (the “transferred business”) by an insurer (the “transferor”) to another insurer (referred to in this subsection as the “transferee”), in applying subsections 12.5(3) and 20.4(3) of the Act in computing the income of the transferor and of the transferee for a particular taxation year that ends on or after the day on which the business was transferred,

- the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of
 - any amount included under subsection 12.5(2) of the Act or deducted under subsection 20.4(2) of the Act in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
 - any amount included under subsection 12.5(3) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
 - any amount deducted under subsection 20.4(3) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection 12.5(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
 - any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 12.5(3) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
 - any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 20.4(3) in computing the income of the transferee for the particular taxation year in respect of the amount included under subsection 12.5(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and

- the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be
 - included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 12.5(3) in computing the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or
 - deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 20.4(3) in computing the income of the transferor for the particular taxation year without reference to the amount included under subsection 12.5(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

New subsection 12.5(6) applies to taxation years that begin on or after October 1, 2006.

Transfer of insurance business — section 85

ITA

12.5(7)

New subsection 12.5(7) provides that, where all or substantially all of the property (the “transferred property”) and liabilities of a business (the “transferred business”) of an insurer have been transferred by the insurer (the “transferor”) to a corporation resident in Canada (the “transferee”) that, immediately after the transfer, was related to the insurer and subsection 85(1) of the Act applied to the insurer and the corporation in respect of the transferred property, in applying subsections 12.5(3) and 20.4(3) of the Act in computing the income of the transferor and of the transferee for a particular taxation year that ends on or after the day on which the business was transferred,

- the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of
 - any amount included under subsection 12.5(2) of the Act or deducted under subsection 20.4(2) of the Act in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
 - any amount included under subsection 12.5(3) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
 - any amount deducted under subsection 20.4(3) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection 12.5(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
 - any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 12.5(3) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
 - any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 20.4(3) in computing the income of the transferee for the particular taxation year in respect of the amount included under subsection 12.5(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and

- the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be
- included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 12.5(3) in computing the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection 20.4(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or
- deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 20.4(3) in computing the income of the transferor for the particular taxation year without reference to the amount included under subsection 12.5(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

New subsection 12.5(7) applies to taxation years that begin on or after October 1, 2006.

Ceasing to carry on business

ITA

12.5(8)

New subsection 12.5(8) of the Act provides that, subject to subsections 12.5(4) to (7) of the Act, where at any time an insurer ceases (otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) of the Act applies or a transfer of the business to which subsection 138(11.5) or (11.94) of the Act applies) to carry on all or substantially all of a business (the “discontinued business”), there is to be included in computing the insurer’s income for the insurer’s taxation year that includes the time that is immediately before that time, the amount determined by the formula A – B.

Element A in the formula is the amount deducted under subsection 20.4(2) of the Act in computing the insurer’s income for the transition year of the insurer that can reasonably be attributed to the discontinued business.

Element B in the formula is the total of all amounts each of which is an amount included under subsection 12.5(3) of the Act in computing the insurer’s income for a taxation year in respect of the amount deducted under subsection 20.4(2) in computing the insurer’s income for the transition year of the insurer that can reasonably be attributed to the discontinued business.

New subsection 12.5(8) applies to taxation years that begin on or after October 1, 2006.

Ceasing to exist

ITA

12.5(9)

New subsection 12.5(9) of the Act provides that, where at any time an insurer that carried on an insurance business (other than a life insurance business) ceases to exist (otherwise than as a result of a merger to which subsection 87(2) of the Act applies or a winding-up to which subsection 88(1) of the Act applies), for the purposes of subsections 12.5(8) and 20.4(4) of the Act, the insurer is deemed to have ceased to carry on the insurance business at the earlier of

- the time (determined without reference to this subsection) at which the insurer ceased to carry on the insurance business, and
- the time that is immediately before the end of the last taxation year of the insurer that ended at or before the time at which the insurer ceased to exist.

New subsection 12.5(9) applies to taxation years that begin on or after October 1, 2006.

Clause 2

Insurer's Reserve Deduction

ITA
20.4

Proposed section 20.4 of the Act provides transitional rules for insurers in respect of their insurance businesses (other than life insurance businesses) as a result of changes to accounting rules that may result in changes to the manner in which these insurers calculate their reserves (under paragraph 20(1)(m) of the Act) and their income (under sections 142.2 to 142.6 of the Act). Similar changes applicable to insurers in respect of their life insurance businesses are proposed in section 138 of the Act. In applying the provisions of new section 20.4, reference should also be made to proposed section 12.5 of the Act.

For further details, see the commentary to proposed section 142.51 of the Act and proposed amendments to Part XIV of the Regulations.

Definitions

ITA
20.4(1)

New subsection 20.4(1) of the Act provides that the definitions in subsection 12.5(1) of the Act apply for the purposes of section 20.4.

New subsection 20.4(1) applies to taxation years that begin on or after October 1, 2006.

Transition year income deduction

ITA
20.4(2)

New subsection 20.4(2) of the Act provides that there is to be deducted in computing an insurer's income for the transition year of the insurer from an insurance business (other than a life insurance business) carried on by it in Canada in that year, the absolute value of the negative amount, if any, of the reserve transition amount of the insurer for the transition year of the insurer in respect of that insurance business.

For further details, see the commentary to the definitions "reserve transition amount" and "transition year" in proposed subsection 12.5(1) of the Act.

New subsection 20.4(2) applies to taxation years that begin on or after October 1, 2006.

Transition year income inclusion reversal

ITA
20.4(3)

New subsection 20.4(3) of the Act provides that, where an amount has been included under subsection 12.5(2) of the Act in computing an insurer's income for the transition year of the insurer from an insurance business (other than a life insurance business) carried on by it in Canada in that year, there is to be deducted in computing the insurer's income, for each particular taxation year of the insurer that ends after the beginning of the transition year, from that insurance business, the amount determined in respect of that particular taxation year by the formula

$$A \times B/1825$$

where

A is the amount included under subsection 12.5(2) in computing the insurer's income for the transition year from that insurance business, and

B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

For further details, see the commentary to the definitions “reserve transition amount” and “transition year” in proposed subsection 12.5(1) of the Act.

New subsection 20.4(3) applies to taxation years that begin on or after October 1, 2006.

Ceasing to carry on business

ITA

20.4(4)

New subsection 20.4(4) of the Act provides that, subject to subsections 20.4(2) and (3) of the Act, where at any time, an insurer ceases (otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) of the Act applies or a transfer of the business to which subsection 138(11.5) or (11.94) of the Act applies) to carry on all or substantially all of a business (the “discontinued business”), there is to be deducted in computing the insurer’s income for the taxation year of the insurer that includes the time that is immediately before that time, the amount determined by the formula A – B.

Element A of the formula is any amount included under subsection 12.5(2) of the Act in computing the insurer’s income for the transition year of the insurer that can reasonably be attributed to the discontinued business.

Element B of the formula is the total of all amounts each of which is an amount deducted under subsection 20.4(3) of the Act in computing the insurer’s income for a taxation year in respect of the amount included under subsection 12.5(2) in computing the insurer’s income for the transition year of the insurer that can reasonably be attributed to the discontinued business.

New subsection 20.4(4) applies to taxation years that begin on or after October 1, 2006.

Clause 3

Financial institution rules

ITA

87(2)(g.2)

Paragraph 87(2)(g.2) of the Act provides that, for the purposes of a number of the rules for financial institutions in sections 142.4 to 142.6 of the Act, the new corporation formed on an amalgamation is deemed to be the same corporation as, and a continuation of, each predecessor corporation.

Paragraph 87(2)(g.2) is amended to include a reference to new subsection 142.51(11) of the Act. This change is proposed as a result of the introduction of new section 142.51 of the Act.

For further details, see the commentary to new section 142.51.

This amendment applies to taxation years that begin on or after October 1, 2006.

Amalgamation of insurers

ITA

87(2.2)

Subsection 87(2.2) of the Act deals with the amalgamation of two or more corporations where one or more of the predecessor corporations was an insurer. Where this occurs, the resulting corporation is treated as a continuation of each of the predecessor insurance corporations for the purposes of section 138 and certain other provisions of the Act relating to insurers that are listed in subsection 87(2.2).

This subsection is amended to add references to new subsections 12.5(8) and 20.4(4) of the Act. This change is proposed as a result of the introduction of new sections 12.5 and 20.4 of the Act.

For further details, see the commentary to new sections 12.5 and 20.4.

This amendment applies to taxation years that begin on or after October 1, 2006.

Clause 4

Winding-up

ITA

88(1)(g)

Paragraph 88(1)(g) of the Act deals with the winding-up of a corporation that is a subsidiary into its parent. Subparagraph 88(1)(g)(i) treats the parent corporation as a continuation of a subsidiary that is an insurance corporation for the purposes of certain provisions relating to insurers listed in subparagraph 88(1)(g)(i).

This subparagraph is amended to add references to proposed new subsections 12.5(8) and 20.4(4) of the Act. This change is proposed as a result of the introduction of new sections 12.5 and 20.4.

For further details, see the commentary to new sections 12.5 and 20.4.

This amendment applies to taxation years that begin on or after October 1, 2006.

Clause 5

Insurance Corporations

ITA

138

Section 138 of the Act sets out detailed rules relating to the taxation of insurance corporations.

Definitions

ITA

138(12)

Subsection 138(12) of the Act contains definitions which are relevant for the purposes of computing an insurer's income from carrying on an insurance business in Canada. Certain of the existing definitions are modified, and additional definitions are added, as follows:

"base year"

New definition "base year" of a life insurer is defined as the taxation year of the life insurer immediately preceding the transition year of the life insurer.

This definition applies to taxation years that begin on or after October 1, 2006.

"life insurance policy"

The existing definition "life insurance policy" is proposed to be amended as a result of proposed amendments to the *Insurance Companies Act*, S.C. 1991, c. 47 that will affect what is considered to be an insurance policy in Canada for Regulatory purposes. Upon this amendment, "life insurance policy" will be defined to include

- a contract for the insurance of risks in respect of the life or death of a person,
- an annuity contract,
- a contract any portion of an insurer's reserves for which vary in amount depending on the fair market value of specified assets, and
- a contract of reinsurance in respect of any contract referred to in any of the above.

This amendment applies to taxation years that begin after Announcement Date.

“reserve transition amount”

The “reserve transition amount” of a life insurer, for the transition year of the life insurer in respect of a life insurance business carried on by it in Canada in that year, is defined as the positive or negative amount determined by the formula A – B.

In applying the formula, element A is the maximum amount that the life insurer would be permitted to claim under subparagraph 138(3)(a)(i) of the Act (and that would be prescribed by section 1404 of the Regulations for the purpose of that subparagraph) as a policy reserve for the base year of the life insurer in respect of its life insurance policies in Canada if

- the generally accepted accounting principles that applied to the life insurer in valuing its assets and liabilities for the transition year of the life insurer had applied to the life insurer for the base year of the life insurer, and
- section 1404 of the Regulations were read in respect of the base year as it reads in respect of the transition year of the life insurer.

Element B of the formula is the maximum amount that the life insurer is permitted to claim under subparagraph 138(3)(a)(i) as a policy reserve for the base year of the life insurer.

For further details, see the commentary to the definitions “base year” and “transition year”.

This definition applies to taxation years that begin on or after October 1, 2006.

“transition year”

The “transition year” of a life insurer is defined as the first taxation year of the life insurer that begins after September 30, 2006.

Transition year income inclusion

ITA

138(16)

New subsection 138(16) of the Act provides that there is to be included in computing the income of a life insurer for the transition year of the life insurer from a life insurance business carried on by it in Canada in that year, the positive amount, if any, of the reserve transition amount of the life insurer for the transition year of the life insurer in respect of that life insurance business.

For further details, see the commentary to the definitions “reserve transition amount” and “transition year” in subsection 138(12) of the Act.

New subsection 138(16) applies to taxation years that begin on or after October 1, 2006.

Transition year income deduction

ITA

138(17)

New subsection 138(17) of the Act provides that there is to be deducted in computing the income of a life insurer for the transition year of the life insurer from a life insurance business carried on by it in Canada in that year, the absolute value of the negative amount, if any, of the reserve transition amount of the life insurer for the transition year of the life insurer in respect of that life insurance business.

For further details, see the commentary to the definitions “reserve transition amount” and “transition year” in subsection 138(12) of the Act.

New subsection 138(17) applies to taxation years that begin on or after October 1, 2006.

Transition year income inclusion reversal

ITA
138(18)

New subsection 138(18) of the Act provides that, where an amount has been included under subsection 138(16) of the Act in computing the income of a life insurer for the transition year of the life insurer from a life insurance business carried on by it in Canada in that year, there is to be deducted in computing the income of the life insurer, for each particular taxation year of the life insurer that ends after the beginning of the transition year, from that life insurance business, the amount determined in respect of that particular taxation year by the formula

$$A \times B/1825$$

where

A is the amount included under subsection 138(16) in computing the income of the life insurer for the transition year from that life insurance business, and

B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

New subsection 138(18) applies to taxation years that begin on or after October 1, 2006.

Transition year income deduction reversal

ITA
138(19)

New subsection 138(19) of the Act provides that, where an amount has been deducted under subsection 138(17) in computing the income of a life insurer for the transition year of the life insurer from a life insurance business carried on by it in Canada in that year, there is to be included in computing the income of the life insurer, for each particular taxation year of the life insurer that ends after the beginning of the transition year, from that life insurance business, the amount determined in respect of that particular taxation year by the formula

$$A \times B/1825$$

where

A is the amount deducted under subsection 138(17) in computing the income of the life insurer for the transition year from that life insurance business, and

B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

New subsection 138(19) applies to taxation years that begin on or after October 1, 2006.

Winding-up

ITA

138(20)

New subsection 138(20) of the Act provides that, where a life insurer has (in a winding-up to which subsection 88(1) of the Act has applied) been wound-up into another corporation (the “parent”), in applying subsections 138(18) and (19) of the Act in computing the income of the life insurer and that of the parent for a particular taxation year that ends on or after the first day on which assets of the life insurer were distributed to the parent on the winding-up,

- the parent is, on and after the first day on which assets of the life insurer were distributed to the parent on the winding-up, deemed to be the same corporation as and a continuation of the life insurer in respect of
 - any amount included under subsection 138(16) of the Act or deducted under subsection 138(17) of the Act in computing the income of the life insurer for the transition year of the life insurer,
 - any amount deducted under subsection 138(18) in computing the income of the life insurer for a taxation year of the life insurer that begins before the first day on which assets of the life insurer were distributed to the parent on the winding-up in respect of the amount deducted under subsection 138(16) in computing the income of the life insurer for the transition year of the life insurer,
 - any amount included under subsection 138(19) in computing the income of the life insurer for a taxation year of the life insurer that begins before the first day on which assets of the life insurer were distributed to the parent on the winding-up in respect of the amount deducted under subsection 138(17) in computing the income of the life insurer for the transition year of the life insurer,
 - any amount required to be deducted, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the life insurer were distributed to the parent on the winding-up, under subsection 138(18) in computing the income of the parent for the particular taxation year of the parent that ends on or after the first day on which assets of the life insurer were distributed to the parent on the winding-up in respect of the amount included under subsection 138(16) in computing the income of the life insurer for the transition year of the life insurer, and
 - any amount required to be included, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the life insurer were distributed to the parent on the winding-up, under subsection 138(19) in computing the income of the parent for the particular taxation year of the parent that ends after the first day on which assets of the life insurer were distributed to the parent on the winding-up in respect of the amount deducted under subsection 138(17) in computing the income of the life insurer for the transition year of the life insurer, and
- the life insurer is, in respect of the particular taxation year of the life insurer, to determine the value for B in the formula in subsections 138(18) and (19) without reference to the days in the particular taxation year of the life insurer that are on or after the first day on which assets of the life insurer were distributed to the parent on the winding-up.

New subsection 138(20) applies to taxation years that begin on or after October 1, 2006.

Amalgamations

ITA

138(21)

New subsection 138(21) of the Act provides that, where there has been an amalgamation (within the meaning assigned by subsection 87(1) of the Act) of a life insurer with one or more other corporations to form one corporation (the “new corporation”), in applying subsections 138(18) and (19) of the Act in computing the income of the new corporation for a particular taxation year of the new corporation that begins on or after the day on which the amalgamation occurred, the new corporation is, on and after the day on which the amalgamation occurred, deemed to be the same corporation as and a continuation of the life insurer in respect of

- any amount included under subsection 138(16) of the Act or deducted under subsection 138(17) of the Act in computing the income of the life insurer for the transition year of the life insurer,
- any amount deducted under subsection 138(18) in computing the income of the life insurer for a taxation year that begins before the day on which the amalgamation occurred in respect of the amount included under subsection 138(16) in computing the income of the life insurer for the transition year of the life insurer,
- any amount included under subsection 138(19) in computing the income of the life insurer for a taxation year of the life insurer that begins before the day on which the amalgamation occurred in respect of the amount deducted under subsection 138(17) in computing the income of the life insurer for the transition year of the life insurer,
- any amount required to be deducted, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection 138(18) in computing the income of the new corporation for the particular taxation year of the new corporation that ends on or after the day on which the amalgamation occurred in respect of the amount included under subsection 138(16) in computing the income of the life insurer for the transition year of the life insurer, and
- any amount required to be included, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection 138(19) in computing the income of the new corporation for the particular taxation year of the new corporation that ends on or after the day on which the amalgamation occurred in respect of the amount deducted under subsection 138(17) in computing the income of the life insurer for the transition year of the life insurer.

New subsection 138(21) applies to taxation years that begin on or after October 1, 2006.

Transfer of insurance business — section 138

ITA

138(22)

New subsection 138(22) of the Act provides that, where subsection 138(11.5) or (11.94) of the Act has applied to the transfer, at any time, of a life insurance business carried on in Canada (the “transferred business”) by a life insurer (the “transferor”) to another life insurer (the “transferee”), in applying subsections 138(18) and (19) of the Act in computing the income of the transferor and of the transferee for a particular taxation year that ends on or after the day on which the business was transferred,

- the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of
 - any amount included under subsection 138(16) of the Act or deducted under subsection 138(17) of the Act in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

- any amount deducted under subsection 138(18) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection (16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
- any amount included under subsection 138(19) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection 138(17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
- any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 138(18) in computing the income of the transferee for the particular taxation year in respect of the amount included under subsection 138(16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
- any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 138(19) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection 138(17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
- the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be
 - deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 138(18) in computing the income of the transferor for the particular taxation year without reference to the amount included under subsection 138(16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or
 - included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 138(19) in computing the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection 138(17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

New subsection 138(22) applies to taxation years that begin on or after October 1, 2006.

Transfer of insurance business — section 85

ITA

138(23)

New subsection 138(23) of the Act provides that, where all or substantially all of the property (the “transferred property”) and liabilities of a business (the “transferred business”) of a life insurer have been transferred by the life insurer (the “transferor”) to a corporation resident in Canada (the “transferee”) that, immediately after the transfer, was related to the insurer and subsection 85(1) of the Act applied to the insurer and the corporation in respect of the transferred property, in applying subsections 138(18) and (19) of the Act in computing the income of the transferor and of the transferee for a particular taxation year that ends on or after the day on which the business was transferred,

- the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of

- any amount included under subsection 138(16) of the Act or deducted under subsection 138(17) of the Act in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
- any amount deducted under subsection 138(18) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection (16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
- any amount included under subsection 138(19) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection 138(17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
- any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 138(18) in computing the income of the transferee for the particular taxation year in respect of the amount included under subsection 138(16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
- any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 138(19) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection 138(17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
- the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be
 - deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 138(18) in computing the income of the transferor for the particular taxation year without reference to the amount included under subsection 138(16) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or
 - included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 138(19) in computing the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection 138(17) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

New subsection 138(23) applies to taxation years that begin on or after October 1, 2006.

Ceasing to carry on business

ITA

138(24)

New subsection 138(24) of the Act provides that, subject to new subsections 138(20) to (23) of the Act, where at any time a life insurer ceases (otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) of the Act applies or a transfer of the business to which subsection 138(11.5) or (11.94) of the Act applies) to carry on all or substantially all of a business (the “discontinued business”),

- there is to be deducted, in computing the income of the life insurer for the taxation year of the life insurer that includes the time that is immediately before that time, the amount determined by the formula

$$A - B$$

where

- A is the amount included under subsection 138(16) of the Act in computing the income of the life insurer for the transition year of the life insurer that can reasonably be attributed to the discontinued business, and
- B is the total of all amounts each of which is an amount deducted under subsection 138(18) of the Act in computing the income of the life insurer for a taxation year in respect of the amount included under subsection 138(16) in computing the income of the life insurer in the transition year of the life insurer that can reasonably be attributed to the discontinued business, and
- there is to be included, in computing the income of the life insurer for the taxation year of the life insurer that includes the time that is immediately before that time, the amount determined by the formula

$$C - D$$

where

- C is the amount deducted under subsection 138(17) of the Act in computing the income of the life insurer for the transition year of the life insurer that can reasonably be attributed to the discontinued business, and
- D is the total of all amounts each of which is an amount included under subsection 138(19) of the Act in computing the income of the life insurer for a taxation year in respect of the amount deducted under subsection 138(17) in computing the income of the life insurer for the transition year of the life insurer that can reasonably be attributed to the discontinued business.

New subsection 138(24) applies to taxation years that begin on or after October 1, 2006.

Ceasing to exist

ITA

138(25)

New subsection 138(25) of the Act provides that, where at any time a life insurer that carried on a life insurance business ceases to exist (otherwise than as a result of a merger to which subsection 87(2) of the Act applies or a winding-up to which subsection 88(1) of the Act applies), for the purposes of subsection 138(24) of the Act, the life insurer is deemed to have ceased to carry on the life insurance business at the earlier of

- the time (determined without reference to subsection 138(25)) at which the life insurer ceased to carry on the life insurance business, and
- the time that is immediately before the end of the last taxation year of the life insurer that ended at or before the time at which the life insurer ceased to exist.

New subsection 138(25) applies to taxation years that begin on or after October 1, 2006.

Clause 6

Definitions

ITA

142.2(1)

Subsection 142.2(1) of the Act defines several terms for the purposes of the rules in sections 142.2 to 142.6 of the Act relating to securities held by financial institutions. It is proposed to amend certain of the existing definitions and add additional definitions as follows:

“excluded property”

New definition “excluded property” of a taxpayer for a taxation year is defined as property, held at any time in the taxation year by the taxpayer, that is

- a share of the capital stock of a corporation if, at any time in the year, the taxpayer has a significant interest in the corporation,
- a property that is, at all times in the year at which the taxpayer held the property, a prescribed payment card corporation share of the taxpayer,
- a property that is, at all times in the year at which the taxpayer held the property, a prescribed securities exchange investment of the taxpayer,
- a share of the capital stock of a corporation held, at any time in the year, by the taxpayer if
 - control of the corporation is, at any time (the “acquisition of control time”) that is after 2001 and in the 24 month period that begins immediately after the end of the year, acquired by
 - the taxpayer,
 - persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(b) of the Act), or
 - the taxpayer and persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(b)), and
 - the taxpayer elects in writing that this provision apply and files the election with the Minister of National Revenue on or before the taxpayer’s filing-due date for the taxpayer’s taxation year that includes the acquisition of control time, or
- a prescribed property.

This definition applies to taxation years that begin on or after October 1, 2006.

“mark-to-market property”

The existing definition “mark-to-market property” of a taxpayer for a taxation year is amended consequential to changes in accounting rules that will affect the valuation of securities held by financial institutions that are subject to the rules in sections 142.2 to 142.6.

The amended definition of “mark-to-market property” of a taxpayer for a taxation year provides that mark-to-market property is property (other than an excluded property) held at any time in the taxation year by the taxpayer that is

- a share,
- if the taxpayer is not an investment dealer, a specified debt obligation where
 - if the obligation is held by the taxpayer at the end of the taxation year, the obligation is, in accordance with generally accepted accounting principles, valued (otherwise than solely because its fair value was less than its cost to the taxpayer, or because of a default of the debtor) at its fair value (determined in accordance with those principles) in the taxpayer’s balance sheet as at the end of the taxation year, or

- if the obligation was disposed of in the taxation year, it is reasonable to expect that, if the taxpayer had not disposed of the obligation in the taxation year, the obligation would have been, in accordance with generally accepted accounting principles, valued (otherwise than solely because its fair value was less than its cost to the taxpayer, or because of a default of the debtor) at its fair value (determined in accordance with those principles) in the taxpayer's balance sheet as at the end of the taxation year,
- if the taxpayer is an investment dealer, a specified debt obligation, and
- a tracking property of the taxpayer where
 - if the tracking property is held by the taxpayer at the end of the taxation year, the tracking property is, in accordance with generally accepted accounting principles, valued (otherwise than solely because its fair value was less than its cost to the taxpayer) at its fair value (determined in accordance with those principles) in the taxpayer's balance sheet as at the end of the taxation year, or
 - if the tracking property was disposed of in the taxation year, it is reasonable to expect that, if the taxpayer had not disposed of the tracking property in the taxation year, the tracking property would have been, in accordance with generally accepted accounting principles, valued (otherwise than solely because its fair value was less than its cost to the taxpayer) at its fair value (determined in accordance with those principles) in the taxpayer's balance sheet as at the end of the taxation year.

This amendment applies to taxation years that begin on or after October 1, 2006, except that, for taxation years that begin before Announcement Date, it is to be read without the inclusion of tracking property as mark-to-market property.

In addition to the amendments to the definition "mark-to-market property" proposed for taxation years that begin on or after October 1, 2006, it is also proposed to amend the definition in the following ways for the following periods:

- for taxation years that begin after February 24, 1994, the definition is to be read as not including as mark-to-market property a property that is, throughout the portion of the year in which the taxpayer holds the property, a prescribed payment card corporation share of the taxpayer,
- for taxation years that begin after 1998, the definition is also to be read as not including as mark-to-market property a property that is, throughout the portion of the year in which the taxpayer holds the property, a prescribed securities exchange investment of the taxpayer, and
- for taxation years that begin after 2001, the definition is also to be read as not including as mark-to-market property a share of a corporation held, at any time in the year, by the taxpayer if
 - control of the corporation is, at any time (referred to in this paragraph "acquisition of control time") that is after 2001 and is in the 24 month period which begins immediately after the end of the year, acquired by
 - the taxpayer,
 - persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(b) of the Act), or
 - the taxpayer and persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(b) of the Act), and
 - the taxpayer elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the acquisition of control time.

An election made under the above provision will be deemed to have been made on a timely basis if it is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this Act is assented to.

“tracking property”

A “tracking property” of a taxpayer is defined to mean property of the taxpayer the fair market value of which is determined primarily by reference to one or more criteria in respect of property (referred to in this definition as “tracked property”) that, if owned by the taxpayer, would be mark-to-market property of the taxpayer, which criteria are

- the fair market value of the tracked property,
- the profits or gains from the disposition of the tracked property,
- the revenue, income or cash flow from the tracked property, or
- any other similar criteria in respect of the tracked property.

This definition applies to taxation years that begin on or after October 1, 2006.

Significant interest

ITA

142.2(2)

The definition “mark-to-market property” in subsection 142.2(1) excludes a share of a corporation in which a taxpayer has a significant interest. Subsections 142.2(2) to (5) define “significant interest” and contain related rules.

Subsection 142.2(2) of the Act provides that a taxpayer has a significant interest in a corporation at any time if the taxpayer is related to the corporation at that time (ignoring any rights described in paragraph 251(5)(b) of the Act) or if the taxpayer holds shares of the corporation carrying at least 10% of the votes and representing at least 10% of the fair market value of all issued shares.

For greater certainty, subsection 142.2(2) is amended to specifically provide that subsection 142.2(2) applies to the definition “specified debt obligation” in subsection 142.2(1) of the Act.

This amendment applies to taxation years that begin on or after October 1, 2006.

Extended meaning of “related”

ITA

142.2(4)

Subsection 142.2(4) of the Act extends the concept of relatedness (as defined in section 251 of the Act) to partnerships and trusts for the purpose of determining whether a taxpayer has a “significant interest” in a corporation. It provides that the rules in section 251 are to be used to determine whether a person or partnership is related to any other person or partnership.

Subsection 142.2(4) is amended to provide that, for the purposes subsections 142.2(2) to (4), in determining if, at a particular time, a person or partnership is related to another person or partnership, the rules in section 251 are to be applied as if,

- a partnership were a corporation having capital stock of a single class divided into 100 issued shares and a member of the partnership owned, at the particular time, that proportion of the issued shares of that class that
 - the fair market value of the member’s partnership interest in the partnership at the particular time is of
 - the fair market value of all partnership interests in the partnership at the particular time, and

- a trust were a corporation having capital stock of a single class divided into 100 issued shares and a beneficiary under the trust owned, at the particular time, that proportion of the issued shares of that class that
 - the fair market value of the beneficiary's beneficial interest in the trust at the particular time is of
 - the fair market value at that time of all beneficial interest in the trust.

The above rules will not apply in respect of a partnership or a trust if the fair market value of the interest of a member of the partnership in the partnership or a beneficiary under the trust in the trust, as the case may be, cannot be determined.

This amendment applies to taxation years that begin on or after October 1, 2006.

Clause 7

Rules applicable to first deemed disposition of debt obligation

ITA

142.5(8.1) and (8.2)

New subsection 142.5(8.2) of the Act applies to a taxpayer for the taxpayer's first taxation year that begins after October 1, 2006 (the "first taxation year") where

- subsection 142.5(2) applied to deem the taxpayer to have disposed of a particular specified debt obligation immediately before the end of the first taxation year (the "particular disposition"), and
- the particular specified debt obligation was owned by the taxpayer at the end of the taxation year immediately preceding the first taxation year and was not a mark-to-market property of the taxpayer for that preceding taxation year.

Where subsection 142.5(8.2) applies to a taxpayer for the first taxation year, the following rules apply to the taxpayer in respect of the particular disposition:

- subsection 20(21) of the Act does not apply to the taxpayer in respect of the particular disposition, and
- if section 12.4 of the Act does not apply to the taxpayer in respect of the particular disposition, there shall be included in computing the taxpayer's income for the first taxation year the amount, if any, by which
 - the total of all amounts each of which is
 - an amount deducted under paragraph 20(1)(p) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the taxation year immediately preceding the first taxation year, or
 - an amount of reserve claimed under paragraph 20(1)(l) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the taxation year immediately preceding the first taxation year,

exceeds

- the total of all amounts each of which is
 - an amount that has been included under paragraph 12(1)(i) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the first taxation year of the taxpayer, or
 - an amount that has been included under paragraph 12(1)(d) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the first taxation year of the taxpayer.

Clause 8

Transition

ITA

142.51

New section 152.51 of the Act provides transitional rules for financial institutions as a result of changes to accounting rules that may result in changes to the manner in which these financial institutions calculate their income under sections 142.2 to 142.6.

Definitions

ITA

142.51(1)

New subsection 142.51(1) of the Act contains definitions that apply for the purposes of section 142.51 of the Act.

“base year”

The “base year” of a taxpayer is defined as the taxation year of the taxpayer that immediately precedes the transition year of the taxpayer.

“transition amount”

The “transition amount” of a taxpayer for the transition year of the taxpayer is defined as the positive or negative amount determined by the formula A – B.

In applying the formula, element A is the total of all amounts each of which is the fair market value, at the end of the base year of the taxpayer, of a transition property of the taxpayer.

Element B is the total of all amounts each of which is the cost amount to the taxpayer, at the end of the base year of the taxpayer, of a transition property of the taxpayer.

“transition property”

A “transition property” of a taxpayer is defined as a property of the taxpayer that

- was owned by the taxpayer at the end of the base year of the taxpayer,
- was, solely because the property was not carried in the taxpayer’s balance sheet as at the end of each of the taxpayer’s taxation years— that end after the taxpayer last acquired the property (otherwise than by reason of a reacquisition under subsection 142.5(2) of the Act) and before the commencement of the taxpayer’s transition year – at the property’s fair market value at the end of those taxation years, not a mark-to-market property of the taxpayer for the base year of the taxpayer, and
- was a mark-to-market property of the taxpayer for the transition year of the taxpayer.

“transition year”

The “transition year” of the taxpayer is defined as the first taxation year of the taxpayer that begins after September 30, 2006.

The definitions in new subsection 142.51(1) apply to taxation years that begin on or after October 1, 2006.

Transition year income inclusion

ITA

142.51(2)

New subsection 142.51(2) of the Act provides that there is to be included in computing the income of a taxpayer for the transition year of the taxpayer, the absolute value of the negative amount, if any, of the transition amount of the taxpayer for the transition year of the taxpayer.

For further details, see the commentary to the definition of “transition amount” and “transition property” in proposed subsection 142.51(1) of the Act.

New subsection 142.51(2) applies to taxation years that begin on or after October 1, 2006.

Transition year income deduction

ITA

142.51(3)

New subsection 142.51(3) of the Act provides that there is to be deducted in computing the income of a taxpayer for the transition year of the taxpayer, the positive amount, if any, of the transition amount of the taxpayer for the transition year of the taxpayer.

For further details, see the commentary to the definition of “transition amount” and “transition property” in proposed subsection 142.51(1) of the Act.

New subsection 142.51(3) applies to taxation years that begin on or after October 1, 2006.

Transition year income inclusion reversal

ITA

142.51(4)

New subsection 142.51(4) of the Act provides that, where an amount has been included under subsection 142.51(2) of the Act in computing the income of a taxpayer for the transition year of the taxpayer, there is to be deducted in computing the income of the taxpayer for each particular taxation year of the taxpayer that ends after the beginning of the transition year, the amount determined in respect of that particular taxation year by the formula

$$A \times B/1825$$

where

A is the amount included under subsection 142.51(2) in computing the income of the taxpayer for the transition year, and

B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

New subsection 142.51(4) applies to taxation years that begin on or after October 1, 2006.

Transition year income deduction reversal

ITA

142.51(5)

New subsection 142.51(5) of the Act provides that, where an amount has been deducted under subsection 142.51(3) of the Act in computing the income of a taxpayer for the transition year of the taxpayer, there is to be included in computing the income of the taxpayer, for each particular taxation year of the taxpayer that ends after the beginning of the transition year, the amount determined in respect of that taxation year by the formula

A x B/1825

where

A is the amount deducted under subsection 142.51(3) in computing the income of the taxpayer for the transition year, and

B is the number of days in the particular taxation year that is before the day that is 1825 days after the first day of the transition year.

New subsection 142.51(5) applies to taxation years that begin on or after October 1, 2006.

Winding-up

ITA

142.51(6)

New subsection 142.51(6) of the Act provides that, where a taxpayer has (in a winding-up to which subsection 88(1) of the Act has applied) been wound-up into another corporation (the “parent”), in applying subsections 142.51(4) and (5) of the Act in computing the income of the taxpayer and that of the parent for a particular taxation year that ends on or after the first day on which assets of the taxpayer were distributed to the parent on the winding-up,

- the parent is, on and after the first day on which assets of the taxpayer were distributed to the parent on the winding-up, deemed to be the same corporation as and a continuation of the taxpayer in respect of
 - any amount included under subsection 142.51(2) or deducted under subsection 142.51(3) by the taxpayer in computing the income of the taxpayer for the transition year of the taxpayer,
 - any amount deducted under subsection 142.51(4) in computing the income of the taxpayer for a taxation year of the taxpayer that begins before the first day on which assets of the taxpayer were distributed to the parent on the winding-up in respect of the amount deducted under subsection 142.51(2) in computing the income of the taxpayer for the transition year of the taxpayer,
 - any amount included under subsection 142.51(5) in computing the income of the taxpayer for a taxation year of the taxpayer that begins before the first day on which assets of the taxpayer were distributed to the parent on the winding-up in respect of the amount deducted under subsection 142.51(3) in computing the income of the taxpayer for the transition year of the taxpayer,
 - any amount required to be deducted, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the taxpayer were distributed to the parent on the winding-up, under subsection 142.51(4) in computing the income of the parent for the particular taxation year of the parent that ends on or after the first day on which assets of the taxpayer were distributed to the parent on the winding-up in respect of the amount included under subsection 142.51(2) in computing the income of the taxpayer for the transition year of the taxpayer, and
 - any amount required to be included, in respect of days in the particular taxation year of the parent that are on or after the first day on which assets of the taxpayer were distributed to the parent on the winding-up, under subsection 142.51(5) in computing the income of the parent for the particular taxation year of the parent that ends after the first day on which assets of the taxpayer were distributed to the parent on the winding-up in respect of the amount deducted under subsection 142.51(3) in computing the income of the taxpayer for the transition year of the taxpayer, and
- the taxpayer is, in respect of the particular taxation year of the taxpayer, to determine the value for B in the formula in subsection 142.51(4) and (5) without reference to the days in the particular taxation year of the taxpayer that are on or after the first day on which assets of the taxpayer were distributed to the parent on the winding-up.

New subsection 142.51(6) applies to taxation years that begin on or after October 1, 2006.

Amalgamations

ITA

142.51(7)

New subsection 142.51(7) of the Act provides that, where there is an amalgamation (within the meaning assigned by subsection 87(1) of the Act) of a taxpayer with one or more other corporations to form one corporation (the “new corporation”), in applying subsections 142.51(4) and (5) of the Act in computing the income of the new corporation for a particular taxation year of the new corporation that begins on or after the day on which the amalgamation occurred, the new corporation is, on and after the day on which the amalgamation occurred, deemed to be the same corporation as and a continuation of the taxpayer in respect of

- any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act in computing the income of the taxpayer for the transition year of the taxpayer,
- any amount deducted under subsection 142.51(4) in computing the income of the taxpayer for a taxation year of the taxpayer that begins before the day on which the amalgamation occurred in respect of the amount included under subsection 142.51(2) in computing the income of the taxpayer for the transition year of the taxpayer,
- any amount included under subsection 142.51(5) in computing the income of the taxpayer for a taxation year of the taxpayer that begins before the day on which the amalgamation occurred in respect of the amount deducted under subsection 142.51(3) in computing the income of the taxpayer for the transition year of the taxpayer,
- any amount required to be deducted, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection 142.51(4) in computing the income of the new corporation for the particular taxation year of the new corporation in respect of the amount included under subsection 142.51(2) in computing the income of the taxpayer for the transition year of the taxpayer, and
- any amount required to be included, in respect of days in the particular taxation year of the new corporation that are on or after the day on which the amalgamation occurred, under subsection 142.51(5) in computing the income of the new corporation for the particular taxation year of the new corporation that ends on or after the day on which the amalgamation occurred in respect of the amount deducted under subsection 142.51(3) in computing the income of the taxpayer for the transition year of the taxpayer.

New subsection 142.51(7) applies to taxation years that begin on or after October 1, 2006.

Transfer of insurance business

ITA

142.51(8)

New subsection 142.51(8) of the Act provides that, where subsection 138(11.5) or (11.94) of the Act has applied to the transfer, at any time, of an insurance business carried on in Canada (the “transferred business”) by an insurer (the “transferor”) to another insurer (the “transferee”), in applying subsections 142.51(4) and (5) of the Act in computing the income of the transferor and of the transferee for a particular taxation year that ends on or after the day on which the business was transferred,

- the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of
 - any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,

- any amount deducted under subsection 142.51(4) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection (2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
- any amount included under subsection 142.51(5) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection 142.51(3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
- any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 142.51(4) in computing the income of the transferee for the particular taxation year in respect of the amount included under subsection 142.51(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
- any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 142.51(5) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection 142.51(3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
- the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be
 - deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 142.51(4) in computing the income of the transferor for the particular taxation year without reference to the amount included under subsection 142.51(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or
 - included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 142.51(5) in computing the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection 142.51(3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

New subsection 142.51(8) applies to taxation years that begin on or after October 1, 2006.

Transfer of insurance business

ITA

142.51(9)

New subsection 142.51(9) of the Act provides that, where all or substantially all of the property (the “transferred property”) and liabilities of a business (the “transferred business”) of a taxpayer have been transferred by the taxpayer (the “transferor”) to a corporation resident in Canada (the “transferee”) that, immediately after the transfer, was related to the taxpayer and subsection 85(1) of the Act applied to the taxpayer and the corporation in respect of the transferred property, in applying subsections 142.51(4) and (5) of the Act in computing the income of the transferor and of the transferee for a particular taxation year, that ends on or after the day on which the business was transferred,

- the transferee is, on and after the day on which the business was transferred, deemed to be the same corporation as and a continuation of the transferor in respect of

- any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
- any amount deducted under subsection 142.51(4) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount included under subsection 142.51(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
- any amount included under subsection 142.51(5) in computing the income of the transferor for a taxation year of the transferor that begins before the day on which the business was transferred in respect of the amount deducted under subsection 142.51(3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business,
- any amount required to be deducted, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 142.51(4) in computing the income of the transferee for the particular taxation year in respect of the amount included under subsection 142.51(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
- any amount required to be included, in respect of days in the particular taxation year of the transferee that are on or after the day on which the business was transferred, under subsection 142.51(5) in computing the income of the transferee for the particular taxation year of the transferee in respect of the amount deducted under subsection 142.51(3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, and
- the transferor is, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, to determine the amount that is required to be
 - deducted, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 142.51(4) in computing the income of the transferor for the particular taxation year without reference to the amount included under subsection 142.51(2) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business, or
 - included, in respect of days in the particular taxation year of the transferor that are on or after the day on which the business was transferred, under subsection 142.51(5) in computing the income of the transferor for the particular taxation year of the transferor without reference to the amount deducted under subsection 142.51(3) in computing the income of the transferor for the transition year of the transferor that can reasonably be attributed to the transferred business.

New subsection 142.51(9) applies to taxation years that begin on or after October 1, 2006.

Transfer to new partnership

ITA

142.51(10)

New subsection 142.51(10) of the Act provides that, where subsection 98(6) of the Act deems a partnership (the “new partnership”) to be a continuation of another partnership (the “predecessor partnership”), in applying subsections 142.51(4) and (5) of the Act in computing the income of the new partnership for a particular taxation year of the new partnership that begins on or after the day on which the new partnership comes into existence, the new partnership is, on or after the day on which the new partnership comes into existence, deemed to be the same partnership as and a continuation of the predecessor partnership in respect of

- any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act in computing the income of the predecessor partnership for the transition year of the predecessor partnership,
- any amount deducted under subsection 142.51(4) in computing the income of the predecessor partnership for a taxation year of the predecessor partnership that begins before the day on which the new partnership comes into existence in respect of the amount included under subsection 142.51(2) in computing the income of the predecessor partnership for the transition year of the predecessor partnership,
- any amount included under subsection 142.51(5) in computing the income of the predecessor partnership for a taxation year of the predecessor partnership that begins before the day on which the new partnership comes into existence in respect of the amount deducted under subsection 142.51(3) in computing the income of the predecessor partnership for the transition year of the predecessor partnership,
- any amount required to be deducted, in respect of days in the particular taxation year of the new partnership that are on or after the day on which the new partnership comes into existence, under subsection 142.51(4) in computing the income of the new partnership for the particular taxation year of the new partnership in respect of the amount included under subsection 142.51(2) in computing the income of the predecessor partnership for the transition year of the predecessor partnership, and
- any amount required to be included, in respect of days in the particular taxation year of the new partnership that are on or after the day on which the new partnership comes into existence, under subsection 142.51(5) in computing the income of the new partnership for the particular taxation year of the new partnership that ends on or after the day on which the new partnership comes into existence in respect of the amount deducted under subsection 142.51(3) in computing the income of the predecessor partnership for the transition year of the predecessor partnership.

New subsection 142.51(10) applies to taxation years that begin on or after October 1, 2006.

Ceasing to carry on business

ITA

142.51(11)

New subsection 142.51(11) of the Act provides that, subject to subsections 142.51 (6) to (10) of the Act, where at any time, a taxpayer ceases (otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) of the Act applies or a transfer of the business to which subsection 138(11.5) or (11.94) of the Act applies) to carry on all or substantially all of a business (the “discontinued business”),

- there is to be deducted, in computing the income of the taxpayer for the taxation year of the taxpayer that includes the time that is immediately before that time, the amount determined by the formula

$$A - B$$

where

A is the amount included under subsection 142.51(2) of the Act in computing the income of the taxpayer for the transition year of the taxpayer that can reasonably be attributed to the discontinued business, and

B is the total of all amounts each of which is an amount deducted under subsection 142.51(4) of the Act in computing the income of the taxpayer for a taxation year in respect of the amount included under subsection 142.51(2) in computing the income of the taxpayer in the transition year of the taxpayer that can reasonably be attributed to the discontinued business,

- there is to be included, in computing the income of the taxpayer for the taxation year of the taxpayer that includes the time that is immediately before that time, the amount determined by the formula

$$C - D$$

where

C is the amount deducted under subsection 142.51(3) of the Act in computing the income of the taxpayer for the transition year of the taxpayer that can reasonably be attributed to the discontinued business, and

D is the total of all amounts each of which is an amount included under subsection 142.51(5) of the Act in computing the income of the taxpayer for a taxation year in respect of the amount deducted under subsection 142.51(3) in computing the income of the taxpayer for the transition year of the taxpayer that can reasonably be attributed to the discontinued business.

New subsection 142.51(11) applies to taxation years that begin on or after October 1, 2006.

Ceasing to carry on business

ITA

142.51(12)

New subsection 142.51(12) of the Act provides that, where at any time a taxpayer that carried on a business ceases to exist (otherwise than as a result of a merger to which subsection 87(2) of the Act applies or a winding-up to which subsection 88(1) of the Act applies), for the purposes of subsection 142.51(10) of the Act, the taxpayer is deemed to have ceased to carry on the business at the earlier of

- the time (determined without reference to this subsection) at which the taxpayer ceased to carry on the business, and
- the time that is immediately before the end of the last taxation year of the taxpayer that ended at or before the time at which the taxpayer ceased to exist.

New subsection 142.51(12) applies to taxation years that begin on or after October 1, 2006.

Clause 9

Change in status — significant interest

ITA

142.6(1.4)

New subsection 142.6(1.4) of the Act provides that if, at the end of a taxation year, a taxpayer holds shares of the capital stock of a corporation, because of that holding, the taxpayer has a significant interest in that corporation at any time in that taxation year, and the taxpayer did not, at any time in the following taxation year have a significant interest in that corporation, the taxpayer is deemed to have,

- disposed of those shares immediately before the end of the taxation year for proceeds equal to the fair market value, at that time, of those shares, and
- acquired those shares at the end of the taxation year at a cost equal to those proceeds.

New subsection 142.6(1.4) applies for taxation years that begin on or after October 1, 2006.

Change in status — prescribed securities exchange investment

ITA

142.6(1.5)

New subsection 142.6(1.5) of the Act provides that if, at any particular time in a taxation year, a property becomes a mark-to-market property of the taxpayer for the taxation year because it ceased, at the particular time, to be a prescribed securities exchange investment of the taxpayer, the taxpayer is deemed

- to have disposed of the property immediately before the particular time for proceeds of disposition equal to its fair market value at the particular time, and
- to have reacquired the property, at the particular time, at a cost equal to those proceeds.

New subsection 142.6(1.5) applies for taxation years that begin after 1998.

Change in status — prescribed payment card corporation share

ITA

142.6(1.6)

New subsection 142.6(1.6) of the Act provides that if, at any particular time in a taxation year, a property becomes a mark-to-market property of the taxpayer for the taxation year because it ceased, at the particular time, to be a prescribed payment card corporation share of the taxpayer, the taxpayer is deemed

- to have disposed of the property immediately before the particular time for proceeds of disposition equal to its fair market value at the particular time, and
- to have reacquired the property, at the particular time, at a cost equal to those proceeds.

New subsection 142.6(1.6) applies to taxation years that begin after February 24, 1994.

Clause 10

Extended reassessment period

ITA

152(6.2)

New subsection 152(6.2) provides that the Minister of National Revenue will reassess a taxpayer's tax for a particular taxation year of the taxpayer, in order to take into account the application in computing the income of the taxpayer for the particular taxation year of paragraph (d) of the definition "excluded property" in subsection 142.2(1) of the Act to shares held by the taxpayer in the particular year, if

- a taxpayer has filed for the particular taxation year the return of income as required by section 150,
- new paragraph (d) of the definition "excluded property" in subsection 142.2(1) of the Act applies to those shares for the particular taxation year, and
- the taxpayer has filed with the Minister, on or before the filing-due date of the taxpayer's taxation year that includes the acquisition of control time referred to in new paragraph (d) of the definition "excluded property", a prescribed form amending the return.

The introduction of new subsection 152(6.2) is consequential to the addition of the definition "excluded property" in subsection 142.2(1).

This change applies for taxation years that begin after 2001. However, for taxation years that begin before October 1, 2006, the reference to "paragraph (d) of the definition of excluded property" is to be read as a reference to "paragraph (d.3) of the definition of "mark-to-market property"". In addition, a prescribed form under proposed subsection 152(6.2) will be deemed to have been filed by a taxpayer on a timely basis if it is filed on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the Act containing this provision is assented to.

Clause 11

Taxable capital employed in Canada of financial institution

ITA

181.3(1)(c)(ii)(B)

Subsection 181.3(1) of the Act provides the rules for determining the amount of a financial institution's "taxable capital employed in Canada" for the purposes of the large corporation tax in Part I.3.

In the case of an insurance corporation a "reserve adjustment" under clause 181.3(1)(c)(ii)(B) is added to their taxable capital employed in Canada.

The demutualization of the insurance industry in Canada has resulted in clause 181.3(1)(c)(ii)(B) no longer being necessary. Accordingly it is being repealed applicable to taxation years that begin on or after October 1, 2006.

Clause 12

Taxable capital employed in Canada

ITA

190.11(b)(ii)

Section 190.11 of the Act contains rules for determining the taxable capital employed in Canada by a resident life insurance corporation for the purposes of Part VI of the Act. In general, the taxable capital employed in Canada by a financial institution is composed of the capital and long-term debt reported on the financial institution's financial statements. In the case of a life insurance corporation that was resident throughout the year, a "reserve adjustment" under subparagraph 190.11(b)(ii) is added to their taxable capital employed in Canada.

The demutualization of the insurance industry in Canada has resulted in subparagraph 190.11(b)(ii) no longer being necessary. Accordingly it is being repealed applicable to taxation years that begin on or after October 1, 2006.

Clause 13

Capital

ITA

190.13(c)(iv)

Section 190.13 of the Act contains rules for determining the taxable capital employed in Canada by a financial institution for the purposes of Part VI of the Act. In general, the taxable capital employed in Canada by a financial institution is composed of the capital and long-term debt reported on the financial institution's financial statements. In the case of a life insurance corporation that was non-resident throughout the year a "reserve adjustment" under subparagraph 190.13(c)(iv) is added to their taxable capital employed in Canada.

The demutualization of the insurance industry in Canada has resulted in subparagraph 190.13(c)(iv) no longer being necessary. Accordingly it is being repealed applicable to taxation years that begin on or after October 1, 2006.

Income Tax Regulations

Clause 14

Policy reserves for pre-1996 policies

ITR
1401

Section 1401 establishes the amount that a life insurer is permitted to deduct as a policy reserve under subparagraph 138(3)(a)(i) in respect of its pre-1996 life insurance policies.

The preamble of subsection 1401(1) is amended by deleting the references to subsection 138(3)(a)(i) of the Act. For the purposes of calculating a life insurer's pre-1996 life insurance policy reserves, policies that were previously considered to be "pre-1996 life insurance policies" will now be subject to the same policy reserve rules as "post-1995 life insurance policies" (as described in section 1404 of the Regulations). Accordingly, paragraphs 1401(1)(d.1), (d.2), (e), and subsections 1401(1.1), (2), (3), and (4) of the Regulations will no longer be needed and will be repealed.

The remaining portions of subsection 1401(1) will apply for the purposes of calculating the Part XII.3 tax on investment income accruing to fund insurance liabilities of a life insurance corporation and the calculation of a policy's accumulating fund in section 307 of the Regulations. Therefore, the preamble and paragraphs 1401(1)(a) to (d) will continue to apply and have been modified to give effect to this restricted application.

The amendments to section 1401 apply to taxation years that begin on or after October 1, 2006.

Clause 15

Policy reserves

ITR
1404

Section 1404 of the Regulations establishes the basis for determining the amount an insurer may deduct under subparagraph 138(3)(a)(i) of the Act as a policy reserve in respect of its life insurance policies that are post-1995 life insurance policies.

Section 1404 is amended to remove the reference to "post-1995 life insurance policies", consequential to amendments to section 1401 of the Regulations. Section 1404 will apply in respect of all life insurance policies of an insurer as a consequence of the amendments.

For further details, see the commentary to proposed amendments to section 1401.

This change is to apply for taxation years that begin on or after October 1, 2006.

Clause 16

Definitions

ITR
1408(1)

Section 1408 of the Regulations provides a number of definitions and interpretative rules for the purposes of the rules in Part XIV dealing with the determination of an insurer's policy reserves.

The definitions "life insurance policy in Canada" and "life insurance policy" in subsection 1408 (1) of the Regulations are proposed to be amended to state that each of these terms has, for the purposes of Part XIV of the Regulations, the same meaning as for the purposes of section 138 of the Act.

This amendment applies to taxation years that begin after ANNOUNCEMENT DATE.

Clause 17**Insurers**

ITR

2400(1)

Subsection 2400(1) of the Regulations provides definitions for the purpose of Part XXIV of the Regulations, which is concerned mainly with the carrying on of an insurance business in Canada, for determining which properties of a life insurer are properties used or held by the insurer in the course of carrying on an insurance business.

A number of new definitions are being added for the purposes of new subsection 2400(8) of the Regulations, and are consequential on the introduction of that new subsection.

“base year”

The “base year” of an insurer is the first taxation year of the insurer immediately preceding the transition year of the insurer.

“transition year”

The “transition year” of an insurer is the first taxation year of the insurer that begins after September 30, 2006.

Each of these definitions apply to taxation years that begin on or after October 1, 2006.

Transition year

ITR

2400(8)

Certain of the accounting rules that insurance corporations must follow are being changed effective with respect to fiscal years beginning on or after October 1, 2006. These changes impact the tax rules that apply to insurance corporations for taxation years commencing on or after October 1, 2006.

In order to ensure that no inconsistencies arise under Part XXIV of the Regulations in respect of the tax treatment of insurance corporations as a result of these changes, new subsection 2400(8) of the Regulations provides that, in applying the provisions of Part XXIV to an insurer for the transition year of the insurer, any computation required to be made under the provisions of Part XXIV in respect of the insurer in respect of the base year of the insurer shall be performed using the same definitions, rules and methodology that were employed in making the computations required to be made under the provisions of Part XXIV in respect of the insurer in respect of the transition year of the insurer.

For example, this rule would be relevant in determining the mean Canadian investment fund of an insurer for its transition year under section 2412 of the Regulations.

New subsection 2400(8) applies to taxation years that begin on or after October 1, 2006.

Clause 18

Prescribed Securities Exchange Investments

ITR
9002.1

New subsection 9002.1 of the Regulations provides that, for the purposes of paragraph (c) of the definition “excluded property” in subsection 142.2(1) of the *Income Tax Act*, a share of the capital stock of a particular corporation held by the taxpayer will be a prescribed securities exchange investment of the taxpayer provided certain conditions are met.

Definitions

ITR
9002.1(1)

New subsection 9002.1(1) of the Regulations contains definitions that apply for the purposes of new section 9002.1.

“qualifying first-tier subsidiary”

A “qualifying first-tier subsidiary” of a particular corporation at any time is another corporation (the “first-tier subsidiary”) if, throughout each period that is within the taxation year of the particular corporation that includes that time and that is a period throughout which the particular corporation held shares of the first-tier subsidiary,

- the activities carried on by the first-tier subsidiary consist principally of qualifying stock exchange operation activities or the holding of shares of the capital stock of or debt issued by qualifying second-tier subsidiaries of the particular corporation,
- the particular corporation holds
 - shares of the first-tier subsidiary that confer a total of 90% or more of the votes that could be cast under all circumstances at an annual meeting of the shareholders of the first-tier subsidiary, and
 - shares of the first-tier subsidiary having a total fair market value of 90% or more of the fair market value of all the issued shares of the first-tier subsidiary,
- all or substantially all of the fair market value of the property of the first-tier subsidiary is attributable to
 - property used by the first-tier subsidiary principally in the course of carrying on qualifying stock exchange operation activities,
 - property owned by the first-tier subsidiary that is a debt issued by, or a share of the capital stock of, a qualifying second-tier subsidiary of the particular corporation if one or more qualifying first-tier subsidiaries in respect of the particular corporation, or the particular corporation and one or more qualifying first-tier subsidiaries of the particular corporation, hold
 - shares of the second-tier subsidiary that confer a total of 90% or more of the votes that could be cast under all circumstances at an annual meeting of the shareholders of the second-tier subsidiary, and
 - shares of the second-tier subsidiary that have a total fair market value of 90% or more of the fair market value of all the issued shares of the second-tier subsidiary, or
 - any combination of one or more of those properties, and
- all or substantially all of the income of the first-tier subsidiary is composed of
 - income derived from qualifying stock exchange operation activities carried on by the first-tier subsidiary,

- interest, dividends, or fees for services, paid to the first-tier subsidiary by a qualifying second-tier subsidiary of the particular corporation, or
- any combination of one or more of those incomes.

“qualifying second-tier subsidiary”

A “qualifying second-tier subsidiary” of a particular corporation at any time is another corporation (the “second-tier subsidiary”) if throughout the period that is within the taxation year of the particular corporation that includes that time and that is a period throughout which any of the particular corporation or a qualifying first-tier subsidiary of the particular corporation held shares of the second-tier subsidiary

- the activities carried on by the second-tier subsidiary consist principally of qualifying stock exchange operation activities,
- all or substantially all of the fair market value of the property of the second-tier subsidiary is attributable to property used by the second-tier subsidiary principally in carrying on qualifying stock exchange operation activities, and
- all or substantially all of the income of the second-tier subsidiary is derived from qualifying stock exchange operation activities carried on by the second-tier subsidiary.

“qualifying securities exchange investment”

“Qualifying securities exchange investment” of a taxpayer at any time in a taxation year of the taxpayer means a share of the capital stock of a particular corporation held by the taxpayer at that time if, throughout the portion of the taxation year that begins at the beginning of the taxation year and ends at that time,

- the particular corporation is not a public corporation,
- the taxpayer is an investment dealer (as defined by subsection 142.2(1) of the Act),
- the activities carried on by the particular corporation consist principally of qualifying stock exchange operation activities,
- all or substantially all of the fair market value of the property of the particular corporation is attributable to
 - property that is used by the particular corporation principally in qualifying stock exchange operation activities,
 - property that is owned by the particular corporation and is a debt issued by, or is a share in the capital stock of, a corporation that is
 - a qualifying first-tier subsidiary of the particular corporation,
 - a qualifying second-tier subsidiary of the particular corporation, or
 - in the case of a debt issued, one or more subsidiaries that are qualifying first-tier or qualifying second-tier subsidiaries of the particular corporation,
 - property that is a share, or another equity interest, in a specified support entity or in a corporation exempt from tax under subsection 149(1) of the Act, or
 - any one or more of those properties described above, and
- all or substantially all of the income of the particular corporation is composed of
 - income derived from the qualifying stock exchange operation activities carried on by the particular corporation,
 - interest, from dividends or from fees for services, paid or payable to the particular corporation by
 - a qualifying first-tier subsidiary of the particular corporation, or
 - a qualifying second-tier subsidiary of the particular corporation, or
 - any combination of one or more of those incomes.

“qualifying stock exchange operation activities”

New definition “qualifying stock exchange operation activities” means

- the operation of a stock exchange in Canada,
- the operation of a quotation and trade reporting system in Canada,
- the provision of services connected to the operation of a stock exchange in Canada or the operation of a quotation and trade reporting system in Canada,
- the deriving of income from property used or held in the course of carrying on
 - the operation of a stock exchange in Canada,
 - the operation of a quotation and trade reporting system in Canada, or
 - the provision of services connected to the operation of a stock exchange in Canada or the operation of a quotation and trade reporting system in Canada, or
- any combination of one or more of those activities described above.

“quotation and trade reporting system in Canada”

A “quotation and trade reporting system in Canada” is a quotation and trade reporting system that

- is located in Canada, and
- is regulated by, and complies with the requirements of, a securities commission (or a similar authority) of a province.

“specified support entity”

A “specified support entity” of a particular corporation is another corporation

- the principal business of which is the operation of a request-for-quote system for the trading of securities, and
- in which the particular corporation has a significant interest (within the meaning of subsection 142.2(2) of the Act).

“stock exchange in Canada”

New definition “stock exchange in Canada” is an exchange that is established for the purpose of trading stocks, commodities, futures, financial derivatives, options, debt or any other traded property and that is

- located in Canada, and
- regulated by, and complies with the requirements of, a securities commission (or a similar authority) of a province.

The definitions in proposed subsection 9002.1(1) apply to taxation years that begin after 1998.

Prescribed securities exchange investment

ITR
9002.1(2)

New subsection 9002.1(2) provides that a share of the capital stock of a particular corporation held by a taxpayer is, for the purpose of paragraph (c) of the definition “excluded property” in subsection 142.2(1) of the Act, a prescribed securities exchange investment of the taxpayer for those periods in the taxation year of the taxpayer during which that share is a qualifying securities exchange investment of the taxpayer.

New subsection 9002.1(2) applies to taxation years that begin after 1998, except that, for taxation years that begin after 1998 and before October 1, 2006, the reference in the subsection to “paragraph (c) of the definition” excluded property” in subsection 142.2(1) of the Act” is to be read as a reference to “paragraph (d.2) of the definition “mark-to-market property” in subsection 142.2(1) of the Act”.

Prescribed Payment Card Corporation Shares

ITR

9002.2

New subsection 9002.2 of the Regulations provides that, for the purposes of paragraph (b) of the definition “excluded property” in subsection 142.2(1) of the Act, a share of the capital stock of a particular corporation held by the taxpayer will be a prescribed payment card corporation share of the taxpayer where certain conditions are met.

Definitions

ITR

9002.2(1)

New subsection 9002.2(1) of the Regulations contains definitions that apply for the purposes of new section 9002.2.

“payment card corporation”

A “payment card corporation” at any time is a corporation in respect of which, throughout its taxation year that includes that time,

- all or substantially all of the activities carried on by the corporation were qualifying payment card business activities; and
- all or substantially all of the fair market value of the property owned by the corporation was attributable to property that was used or held in the course of carrying on the qualifying payment card business activities of the corporation.

“qualifying payment card corporation share”

A “qualifying payment card corporation share” of a taxpayer at any time is a share of the capital stock of a payment card corporation held by the taxpayer at that time if

- the share is not, at that time, listed on a stock exchange,
- the share is not convertible into, is not exchangeable for, and does not derive its value from, a share of the capital stock of the payment card corporation, or of a corporation related to it, that is listed on a stock exchange,
- the only persons permitted, at that time, to own the share and shares identical to the share are persons that are licensed by the payment card corporation (or a corporation related to the payment card corporation) to issue payment cards of the payment card brands of the payment card corporation, and
- the share was issued by the payment card corporation to the taxpayer or to a person related to the taxpayer.

“qualifying payment card business activities”

New definition “qualifying payment card business activities” of a corporation means activities related to managing payment card brands including

- licensing payment card brands to financial institutions,
- processing payments made by holders of payment cards managed by the corporation,
- providing consulting, information and other services to licensees of the corporation,

- deriving income from property used or held in the course of carrying out those activities described above;
- holding shares of the capital stock or indebtedness of one or more payment card corporations that are at that time connected with the corporation (within the meaning of subsection 186(4) of the Act on the assumption that the payment card corporation is at that time a “payer corporation” within the meaning of that subsection), and
- any combination of those activities described above.

The definitions in proposed subsection 9002.2(1) apply to taxation years that begin after February 24, 1994.

Prescribed payment card corporation share

ITR

9002.2(2)

Proposed new subsection 9002.2(2) of the Regulations provides that a share of the capital stock of a particular corporation held by a taxpayer is, for the purpose of paragraph (b) of the definition “excluded property” in subsection 142.2(1) of the Act, a prescribed payment card corporation share of the taxpayer for those periods in the taxation year of the taxpayer during which that share is a qualifying payment card corporation share of the taxpayer.

This amendment applies to taxation years that begin after February 24, 1994, except that, for taxation years that begin after February 24, 1994, and before October 1, 2006, the reference in the subsection to “paragraph (b) of “excluded property” in subsection 142.2(1) of the Act” is to be read as a reference to “paragraph (d.1) of the definition “mark-to-market property” in subsection 142.2(1) of the Act”.

